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TITLE 16

PRACTICE, PROCEDURE, AND COURTS

(CHAPTERS 1-17 IN VOLUME 14A; CHAPTERS 18-54 IN VOLUME 14B; CHAPTERS 55-89 IN VOLUME 15)

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

SUBTITLE 7. PARTICULAR PROCEEDINGS AND REMEDIES

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

CHAPTER 90

JUDGMENT AND SENTENCE GENERALLY

Subchapter 1 — General Provisions

16-90-103. Sentences without notice void.

CASE NOTES

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Judge's attempt to reduce a one-year sentence following a contempt order to six months was null and void where the trial judge failed to notify either party before amending his original order. Linder v. Weaver, 364 Ark. 319, 219 S.W.3d 151 (2005).

16-90-105. Verdict of guilty.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Criminal Law, 29 U. Ark. Little Rock L. Rev. 849.

CASE NOTES

In General.

This section does not require the voiding of a judgment entered more than 30 days after a court's acceptance of a guilty plea. Ainsworth v. State, 367 Ark. 353, 240 S.W.3d 105 (2006).

Cited: Loar v. State, 368 Ark. 171, 243 S.W.3d 923 (2006).

16-90-107. Fixing of punishment generally.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

CASE NOTES

Analysis

Discretion of Court.
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Modification of Sentence.
Motion to Reduce.

Discretion of Court.

Trial court did not abuse its discretion in denying defendant's motion to reduce his life sentence for the rape of his minor daughter as numerous witnesses testified to the alleged abuse of the victim, including the victim herself, and a nurse examiner testified to signs of extensive and ongoing sexual abuse; based on this evidence, the jury's verdict did not appear to be the result of passion or prejudice. McDonald v. State, 364 Ark. 491, 221 S.W.3d 349 (2006).

Fixing by Court.

Use of the word "may" in § 5-4-702 does not mean that a jury has the discretion as to whether to impose an enhanced sentence where a crime of domestic violence was committed in the presence of a child; rather, it means the state had the option

of seeking the enhancement. Thus, where no sentence was imposed by the jury, a trial court did not err by imposing one under this section. Sullivan v. State, 366 Ark. 183, 234 S.W.3d 285 (2006).

Modification of Sentence.

Trial court did not abuse its discretion in denying defendant's post-trial request for a sentence reduction pursuant to subsection (e) of this section because defendant's 20-year sentence for second degree sexual assault, in violation of § 5-14-125, fell within the statutory range. Brown v. State, 2010 Ark. 420, 378 S.W.3d 66 (2010).

Motion to Reduce.

Denial of appellant's, an inmate's, petition for postconviction relief was proper because he failed to prove that he received the ineffective assistance of counsel. In part, the inmate's argument that the jury's verdict imposing the maximum sentences to run consecutively was a result of passion and prejudice is not persuasive; considering the court's ability to sua sponte reduce the sentence, the trial court did not clearly err in finding that a motion to reduce the sentence under subsection (e) of this section would have been denied. Hoyle v. State, 2011 Ark. 321, 388 S.W.3d 901 (2011).

Cited: Barritt v. State, 372 Ark. 395, 277 S.W.3d 211 (2008); Vance v. State, 2011 Ark. 243, 383 S.W.3d 325 (2011).

16-90-111. Correction or reduction of sentence.

(a) Any circuit court, upon receipt of petition by the aggrieved party for relief and after the notice of the relief has been served on the prosecuting attorney, may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided in this section for the reduction of sentence.

(b)(1) The court may reduce a sentence within ninety (90) days after the sentence is imposed or within sixty (60) days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal.

(2) The court may also reduce a sentence upon revocation of probation as provided by law.

History. Acts 1983, No. 431, § 1; A.S.A. 1947, § 43-2314; Acts 1987, No. 550, § 1; 1999, No. 578, § 1.

Publisher's Notes. This section is being set out in its entirety as it was previously set out as "[Superseded]".

This section was declared superseded by ARCrP 37.2(c) in Harris v. State, 318 Ark. 599, 887 S.W.2d 514 (1994). However, in Reeves v. State, 339 Ark. 304, 5 S.W.3d 41 (1999), the Arkansas Supreme Court cited Black's Law Dictionary 1220 (7th ed. 1999) and held that when dealing with a motion to modify a condition contained in a judgment of probation under subsection (b) of this section rather than a petition under ARCrP 37 for postconviction relief following imprisonment, a trial court had the authority to modify an illegal condition of probation under subsection (a) of this section because the defendant was on probation and therefore by definition not in custody.

By per curiam order dated December 19, 1994, the Supreme Court provided: "This court frequently acts on motions filed in the course of appeals of orders denying post-conviction relief pursuant to Arkansas Criminal Procedure Rule 37, Ark. Code Ann. § 16-90-111 (Supp. 1991), statutes which govern the issuance of writs of habeas corpus and mandamus as well as legal remedies such as error coram nobis proceedings and others. As there is no provision in the prevailing rules of procedure for a motion for reconsideration to be filed after this court has denied a motion which stems from a post-conviction matter, such motions will no longer be filed."

CASE NOTES

Analysis

Appeal.
Appeal Dismissed.
Considered as a Petition for Postconviction Relief.
Untimely Petition.

Appeal.

Defendant's appeal of the denial of defendant's petition to correct an illegal sentence was dismissed because defendant could not prevail, as, (1) to the extent defendant's claims were cognizable under Ark. R. Crim. P. 37.1, defendant's request for relief was properly treated as a petition under Rule 37.1 and was subject to the time limitations contained in Ark. R. Crim. P. 37.2(c), which defendant did not satisfy after having pled guilty, and, (2) to the extent defendant's claims were not cognizable under Ark. R. Crim. P. 37.1, the claims alleged no error required to support a claim of an illegal sentence, as defendant did not show defendant's sentences were outside the statutory range, and defendant's petition was not timely filed under this section. Davis v. State, 2013 Ark. 189, — S.W.3d — (2013).

Appeal Dismissed.

Defendant's appeal of the denial of defendant's motion to correct an illegal sentence was dismissed because the sentence defendant contested had been vacated and remanded to the trial court, which resentenced defendant, rendering the appeal moot. Glaze v. State, 2013 Ark. 141, — S.W.3d — (2013).

Considered as a Petition for Postconviction Relief.

Where defendant requested relief based on a claim of ineffective assistance of counsel, defendant's motion for a sentence reduction under this section should have been considered by the trial court as a petition for postconviction relief under Ark. R. Crim. P. 37.1(a). Gonder v. State, 2011 Ark. 248, 382 S.W.3d 674 (2011).

Inmate's appeal of the denial of the inmate's petition to correct an illegal sentence, pursuant to this section, was dismissed because (1) Ark. R. Crim. P. 37.2(b) said all postconviction relief grounds cognizable under Ark. R. Crim. P. 37.1 had to be raised in a Rule 37.1 petition filed within 90 days of the date of judgment when a defendant pled guilty, even though this section let a trial court correct an illegal sentence at any time, as the statute was superseded to the extent the statute conflicted with the Rule's time limits, (2) the petition was filed over six years after judgment was entered, (3) the time limits in Ark. R. Crim. P. 37.2 were jurisdictional, denying a trial court jurisdiction if the time limits were not met, and, on appeal, a reviewing court, and (4) the inmate's sentence was within the prescribed statutory ranges in §§ 5-4-501(b)(2)(A) and 5-4-401(b)(1). Redus v. State, 2013 Ark. 9, — S.W.3d —, 2013 Ark. LEXIS 15 (Jan. 17, 2013).

Untimely Petition.

Where appellant entered a guilty plea to multiple felony offenses and received an aggregate sentence of 720 months' in prison, the trial court did not err by denying his motion to correct an illegal sentence because he did not file it within the 90-day time limit required by subdivision (b)(1) of this section. Purifoy v. State, 2013 Ark. 26, — S.W.3d — (2013).

Cited: State v. Wilmoth, 369 Ark. 346, 255 S.W.3d 419 (2007); Robertson v. State, 2010 Ark. 300, 367 S.W.3d 538 (2010).

16-90-120. Felony with firearm.

(a) Any person convicted of any offense that is classified by the laws of this state as a felony who employed any firearm of any character as a means of committing or escaping from the felony, in the discretion of the sentencing court, may be subjected to an additional period of confinement in the state penitentiary for a period not to exceed fifteen (15) years.

(b) The period of confinement, if any, imposed under this section shall be in addition to any fine or penalty provided by law as punish-

ment for the felony itself. Any additional prison sentence imposed under the provisions of this section, if any, shall run consecutively and not concurrently with any period of confinement imposed for conviction of the felony itself.

(c) A separate appeal may be taken to the Supreme Court from the imposition of the sentence, if any, provided for by this section, and any appeal shall be in the manner prescribed for appellate review of conviction of criminal offenses in general. However, the sole and only question to be decided upon the separate appeal shall be whether the evidence warrants a finding that the defendant actually employed a firearm in the commission of, or escape from commission of, the felony for which he or she stands convicted.

(d) Any reversal of a defendant's conviction for the commission of the felony shall automatically reverse the prison sentence which may be imposed under this section.

(e)(1) For an offense committed on or after July 2, 2007, notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, except as provided in subdivision (e)(1)(B)(ii) of this section, any person who is sentenced under subsection (a) of this section is not eligible for parole or community correction transfer until the person serves:

(A) Seventy percent (70%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section if the underlying felony was any of the following:

(i) Murder in the first degree, § 5-10-102;

(ii) Kidnapping that is a Class Y felony, § 5-11-102;

(iii) Aggravated robbery, § 5-12-103;

(iv) Rape, § 5-14-103; or

(v) Causing a catastrophe, § 5-38-202(a);

(vi) Trafficking methamphetamine, § 5-64-440(b)(1);

(vii) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401; or

(viii) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

(B)(i) Except as provided in subdivision (e)(1)(B)(ii) of this section, seventy percent (70%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section if the underlying felony was any of the following:

(a) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401; or

(b) Possession of drug paraphernalia with the intent to manufacture methamphetamine, the former § 5-64-403(c)(5); or

(c) Trafficking methamphetamine, § 5-64-440(b)(1).

(ii) The person is eligible for parole or community correction transfer if the person serves at least fifty percent (50%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section for the offenses listed in subdivision (e)(1)(B)(i) of this section with credit for the award of meritorious good time under

§ 12-29-201 unless the person is sentenced to a term of life imprisonment. The time served by any person under this subdivision (e)(1)(B)(ii) shall not be reduced to less than fifty percent (50%) of the person's original sentence under subsection (a) of this section; or

(C) Either one-third (⅓) or one-half (½) of the term of imprisonment to which the person is sentenced under subsection (a) of this section with credit for meritorious good time and depending on the seriousness determination made by the Arkansas Sentencing Commission if the underlying felony was any felony not listed in subdivision (e)(1)(A) or (B) of this section.

(2) The sentencing court may waive subdivision (e)(1) of this section if all of the following circumstances exist:

(A) The defendant was a juvenile when the offense was committed;

(B) The defendant was merely an accomplice to the offense; and

(C) The offense was committed on or after July 31, 2007.

(f) A person who commits the offense of possession of drug paraphernalia with the intent to manufacture methamphetamine, § 5-64-443, after July 27, 2011, shall not be subject to the provisions of this section.

History. Acts 1969, No. 78, §§ 1-3; 1973, No. 61, § 1; A.S.A. 1947, §§ 43-2336 — 43-2338; Acts 2007, No. 1047, § 5; 2011, No. 570, § 76.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment inserted (e)(1)(A)(vi) through (viii); rewrote (e)(1)(B)(i)(*a*); substituted "the former § 5-64-403(c)(5); or" for "§ 5-64-403(c)(5)" in (e)(1)(B)(i)(*b*); inserted (e)(1)(B)(i)(*c*); and added (f).

CASE NOTES

Analysis

In General.
Additional Confinement.
Appeal.
Construction With Other Laws.
Firearm Enhancement Statute Not Repealed by Implication.
Indictment.
Instructions.
Sentencing.

In General.

Plain language of the firearm-enhancement statute shows that the legislature intended for it to apply to any offense, in addition to any fine or penalty provided by law as punishment for the felony itself. McKeever v. State, 367 Ark. 374, 240 S.W.3d 583 (2006).

Additional Confinement.

Defendant's convictions for aggravated assault in violation of § 5-13-204(a) and use of a firearm in commission of a felony did not subject defendant to double jeopardy as the conviction under this section was used to enhance defendant's sentence. Davis v. State, 93 Ark. App. 443, 220 S.W.3d 248 (2005).

In a case involving terroristic acts under § 5-13-310(a)(1) where three shots were fired into an automobile, because each terroristic act was a separate offense that could have been committed with or without a firearm, each crime was subject to a firearm enhancement under this section. McKeever v. State, 367 Ark. 374, 240 S.W.2d 583 (2006).

Appeal.

In a murder case, the trial court did not err in allowing the state to amend the information on the morning of trial to include a felony-firearm enhancement. Because the charge defendant was tried for was contained in the original information, the reviewing court failed to see how defendant was unfairly surprised or oth-

erwise prejudiced by the amended information. Plessy v. State, 2012 Ark. App. 74, 388 S.W.3d 509 (2012).

Construction With Other Laws.

This section, the firearm enhancement statute, was not repealed by implication when the Arkansas Criminal Code became effective in 1976; former § 5-4-505 could be read in harmony with this section, and the general assembly's amendment to this section was inconsistent with the conclusion it had been repealed by implication. Sesley v. State, 2011 Ark. 104, 380 S.W.3d 390 (2011).

Firearm Enhancement Statute Not Repealed by Implication.

Fifteen years' imprisonment pursuant to a firearm enhancement was proper because this section was not repealed by implication when the Arkansas Criminal Code became effective; statutes were not in irreconcilable conflict, and the general assembly had validated this section's continued existence by amending it. Neely v. State, 2010 Ark. 452, 370 S.W.3d 820 (2010), rehearing denied, — S.W.3d —, 2011 Ark. LEXIS 377 (Ark. Jan. 6, 2011).

Where defendant was found guilty of aggravated robbery and theft of property, his sentence was enhanced by seven years pursuant to this section for employing a firearm in the commission of a felony; the appellate court rejected the argument that the firearm enhancement was repealed on January 1, 1976, when the Arkansas Criminal Code took effect. The firearm enhancement did not violate the plain language of § 5-4-104(a), because § 5-4-104(a) and subsections (a)-(b) of this section can be read harmoniously to mean that subsections (a)-(b) are only a sentence enhancement, while the Arkansas Criminal Code provides the minimum sentences to be imposed for each specific offense. Williams v. State, 2013 Ark. App. 179, — S.W.3d — (2013), review denied, — S.W.3d —, 2013 Ark. LEXIS 211 (Ark. Apr. 11, 2013).

Indictment.

Presumption of prosecutorial vindictiveness did not arise when the State filed an amended information adding a firearm enhancement under this section after defendant's first trial for aggravated robbery and theft ended in a mistrial, because the deputy prosecutors provided an objective, on-the-record explanation with their testimony that they initially decided not to amend the information in the interest of judicial economy to avoid a continuance. After the first trial ended in a hung jury, the threat of delay was no longer a factor. Williams v. State, 2013 Ark. App. 179, — S.W.3d — (2013), review denied, — S.W.3d —, 2013 Ark. LEXIS 211 (Ark. Apr. 11, 2013).

Instructions.

Circuit court did not abuse its discretion in denying defendant's second-degree battery instruction because the offense charged was first-degree battery pursuant to § 5-13-201(a)(3), and the jury was not required to find that defendant employed a firearm in order to convict him of that offense, nor was the jury required to apply the firearm enhancement if it convicted defendant of first-degree battery; the firearm enhancement was not an element of the first-degree-battery offense but was an additional sentence authorized by statute if defendant was convicted of first-degree battery, and the jury determined that defendant employed a firearm during commission of that offense as prohibited by this section. Reed v. State, 2011 Ark. App. 352, 383 S.W.3d 881 (2011).

Sentencing.

After defendant was convicted of three counts of committing a terroristic act, the trial court did not err in imposing multiple firearm enhancements because defendant committed three separate criminal offenses, and each offense was committed with a firearm. McKeever v. State, 367 Ark. 374, 240 S.W.3d 583 (2006).

Defendant's conviction for murder in the second degree, with a firearm enhancement, was proper because defendant acted knowingly to cause the victim's death under circumstances manifesting extreme indifference to the value of human life. The issues involved credibility and it was presumed that a person intended the natural and probable consequences of his or her acts; defendant shot her husband in the wrist with a handgun, he bled to death as a result of the wound, and additional evidence indicated that the fatal wound was defensive in nature. Johnson v. State, 2010 Ark. App. 153, 375 S.W.3d 12 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 257 (May 6, 2010).

Defendant's sentence enhancement pursuant to subsection (a) of this section, which allowed discretionary enhancement for using a firearm as a means of committing a felony, was proper because defendant's accomplice liability for the underlying offense of murder, that was committed by use of a firearm, was sufficient for the statutory enhancement to apply. Mhoon v. State, 2010 Ark. App. 183, — S.W.3d — (2010).

Summary denial of an inmate's Ark. R. Crim. P. 37.1 postconviction relief petition was reversed because the order did not provide the requisite findings and conclusions, and the record did not clearly support affirmation; because no hearing was held, the trial court had an obligation to provide written findings that showed that the inmate was entitled to no relief. It was not conclusive from the petition or the record that relief was not warranted on the inmate's claims concerning illegal sentencing as there was no evidence that counsel agreed to allow the court to sentence on a gun enhancement charge. Davenport v. State, 2011 Ark. 105, — S.W.3d — (2011).

Where defendant was convicted of multiple offenses and sentenced to 240 months for committing a terroristic act and 192 months for domestic battery, the enhancement of his sentence on both charges by 144 months pursuant to this section did not result in his sentence being enhanced twice for using a deadly weapon because the use of a firearm was not an element the prosecution had to prove to obtain his convictions. King v. State, 2012 Ark. App. 94, — S.W.3d — (2012).

Cited: Polivka v. State, 2010 Ark. 152, 362 S.W.3d 918 (2010).

16-90-121. Second or subsequent felony with firearm.

CASE NOTES

Good Time Credits.

Because § 12-29-201, changing how meritorious good-time credit was applied, did not impliedly repeal the language in this section (the deadly-weapon enhancement statute applicable at the time of an inmate's sentence), the inmate's 30-year sentence for first-degree murder was subject to reduction by meritorious good-time credit at the conclusion of the first 10 years of the sentence. Hobbs v. Baird, 2011 Ark. 261, — S.W.3d — (2011).

16-90-122. Post-conviction release of nonviolent offenders.

(a) Except as provided in subsection (b) of this section, any circuit judge may authorize the temporary release of an offender in the sheriff's custody who has:

(1) Been found guilty of or pleaded guilty or nolo contendere to a nonviolent felony offense in circuit court; and

(2) Been sentenced to a term of imprisonment and committed to the Department of Correction or the Department of Community Correction and is awaiting transfer to the Department of Correction or the Department of Community Correction.

(b) A circuit judge shall not authorize the temporary release of an offender under subsection (a) of this section if the offender has been found guilty of or pleaded guilty or nolo contendere to a:

(1) Class Y felony offense listed in § 16-93-618; or

(2) Felony sex offense listed in the definition of "sex offense" in § 12-12-903.

(c)(1) The circuit judge may authorize the release under the terms and conditions that he or she determines are necessary to protect the public and to ensure the offender's return to custody upon notice that

bed space is available at the Department of Correction or the Department of Community Correction.

(2) The circuit judge may require a cash or professional bond to be posted in an amount suitable to ensure the offender's return to custody.

History. Acts 2005, No. 1261, § 1; 2007, No. 279, § 1; 2011, No. 570, § 77.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "§ 16-93-618" for "§ 16-93-611" in (b)(1).

CASE NOTES

Applicability.

Allowing defendant's release on a bed-space bond was erroneous because the release of offenders was only allowed if they were nonviolent in nature; defendant pled guilty to two counts of unlawful discharge of a firearm from a vehicle, which was a crime of violence under § 5-74-103. State v. Britt, 368 Ark. 273, 244 S.W.3d 665 (2006).

Because defendant was not "in custody" at the time defendant violated the conditions of defendant's release on bond under subdivision (a)(2) of this section, the circuit court erred in denying defendant's motion for directed verdict on defendant's conviction for second-degree escape under § 5-54-111(a)(2). Magness v. State, 2012 Ark. 16, 386 S.W.3d 390 (2012).

16-90-123. Sealing certain convictions.

(a) As used in this section, "victim of human trafficking" means a person who has been subjected to trafficking of persons, § 5-18-103, or any former law of this state, law of another state, or federal law that is substantially similiar.

(b)(1) A person convicted of prostitution, § 5-70-102, may file a petition to seal the conviction under this section if it was obtained as a result of the person having been a victim of human trafficking.

(2) A petition under this section may be filed at any time and may be filed for a conviction imposed before, on, or after August 16, 2013.

(3)(A) The court shall hold a hearing on the petition under this section as provided in § 16-90-904 [repealed effective January 1, 2014].

(B) The court may dismiss the petition without a hearing if the court finds that the petition fails to assert a claim for which relief may be granted.

(4) The court shall grant the petition under this section if it finds by a preponderance of the evidence that:

(A) The petitioner was convicted of prostitution, § 5-70-102; and

(B) The conviction was obtained as a result of the petitioner's having been a victim of human trafficking.

(5) If the petition under this section is granted, the court shall:

(A) Issue an order to seal the conviction; and

(B) With respect to the conviction for prostitution, § 5-70-102, redact the petitioner's name from all records and files related to the petitioner's:

(i) Arrest;
(ii) Citation;
(iii) Criminal investigation;
(iv) Criminal charge;
(v) Adjudication of guilt;
(vi) Criminal proceedings; and
(vii) Probation for the offense.

(6)(A) Official documentation by a federal, state, or local government agency verifying that at the time of the conviction for prostitution, § 5-70-102, the petitioner was a victim of human trafficking creates a presumption under this section that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking.

(B) Documentation under this subdivision (b)(6) is not required to grant a petition under this section.

(C) Documentation under this subdivision (b)(6) may include without limitation:

(i) Certified records of federal or state court proceedings that demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under state law or the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 et seq., as it existed on January 1, 2013; or

(ii) Certified records of "approval notices" or "law enforcement certifications" generated from federal immigration proceedings available to victims of human trafficking.

History. Acts 2013, No. 1157, § 7.

A.C.R.C. Notes. Effective January 1, 2014, Acts 2013, No. 1460, § 7, repeals § 16-90-904 referred to in subdivision (b)(3)(A) of this section. This section may be affected by the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., which was enacted by Acts 2013, No. 1460, § 9. Acts 2013, No. 1460, repealed certain criminal record sealing provisions and enacted new comprehensive criminal record sealing provisions.

Subchapter 2 — Multiple Convictions

16-90-201. Punishment for second or subsequent convictions generally.

CASE NOTES

Analysis

Construction.
Procedure Generally.

Construction.

Circuit court erred in sentencing defendant under this section because the statute was repealed by implication with the enactment of § 5-4-501, and the effect of sentencing defendant under this section was prejudicial since there was the possibility that the jury would have returned a sentence less than the minimum set forth in this section; because sentencing had to be determined by the law in effect at the time of the commission of a crime, defendant was entitled to a jury instruction in accordance with the Criminal Code's habitual-offender statute, § 5-4-501. Glaze

v. State, 2011 Ark. 464, 385 S.W.3d 203 (2011), appeal dismissed, 2013 Ark. 141, — S.W.3d — (2013).

General Assembly clearly took up the subject matter of the enhanced sentencing of habitual offenders anew in the more current statute, § 5-4-501, and the conflict between this section and § 5-4-501 is irreconcilable, resulting in a repeal by implication of this section; a plain reading of §§ 5-4-501 and this section makes clear that § 5-4-501 is the more comprehensive statute, covering the same subject matter as this section as well as including additional provisions to provide for the sentencing of habitual offenders who are convicted of serious and violent felonies, and it is further evident that the two statutes cannot be read together harmoniously, as the two statutes cannot be read together harmoniously, as the sentencing ranges prescribed by each statute conflict. Glaze v. State, 2011 Ark. 464, 385 S.W.3d 203 (2011), appeal dismissed, 2013 Ark. 141, — S.W.3d — (2013).

Procedure Generally.

Circuit court did not err in sentencing defendant as a habitual offender because there was no error in the form of the amended felony information; the amended felony information incorporated by reference the charges included in the original information and quoted the habitual-offender statute, and that was sufficient to alert defendant to the fact that he could be sentenced as a habitual offender and that his prior convictions could be considered in assessing an enhanced sentence. Glaze v. State, 2011 Ark. 464, 385 S.W.3d 203 (2011), appeal dismissed, 2013 Ark. 141, — S.W.3d — (2013).

There was no error in the timing of the amendment of the felony information because the amendment did not change the nature of the crime charged, and there was no basis for concluding that defendant was unfairly surprised by the state's amended felony information; prior to the filing of the amended felony information, defendant received a certified copy of the judgment and commitment order convicting him of three prior felonies. Glaze v. State, 2011 Ark. 464, 385 S.W.3d 203 (2011), appeal dismissed, 2013 Ark. 141, — S.W.3d — (2013).

Subchapter 3 — Restitution to Victims

SECTION.

16-90-301. Legislative determination.

RESEARCH REFERENCES

ALR. Mandatory Victims Restitution Act — Constitutional Issues. 20 A.L.R. Fed. 2d 239.

16-90-308. Proceeds from sale of rights arising from criminal act.

(a)(1) Any person referred to as the defendant in this section who has been convicted of or pleaded guilty or nolo contendere to any crime who contracts to benefit economically regarding the crime shall pay to the circuit court in which the charges for the crime were filed any money or thing of value contracted to be paid to the defendant or his or her spouse, heirs, assigns, and transferees.

(2) As used in subdivision (a)(1) of this section, "benefit economically" does not include reimbursement for travel or other expenses.

(3) The circuit court shall deposit the moneys into an escrow account for the benefit of and payable to any victim or his or her legal representative of crimes committed by the defendant.

(b)(1) Payments from the account shall be made to the defendant upon an order of the judge of the circuit court wherein the charges were filed upon a showing that the money or thing of value shall be used for the exclusive purpose of retaining legal representation for the defendant at any stage of the criminal proceedings arising out of the criminal charge or to pay for already rendered legal representation and that the defendant would otherwise be unable to or has been unable to afford adequate legal representation.

(2) As used in subdivision (b)(1) of this section, "legal representation" includes costs of expert witnesses and testing of evidence.

(c)(1) Payments from the account shall be used to satisfy any civil judgment rendered in favor of a victim or his or her legal representative which arose out of the circumstances upon which the defendant's conviction was based, but only if the victim brings a civil action to recover money against the defendant.

(2) If no victim or legal representative of a victim has filed suit within five (5) years from the filing of the charges, any money remaining shall be paid over to any state-supported victim reparation or assistance program.

(3) Upon the disposition of the criminal charges in favor of the defendant, money in the account shall be paid over to the defendant.

(d) The circuit court in which the charges were filed shall publish a notice in at least one (1) newspaper of general circulation in each county of the state one (1) time every year for four (4) years from the date the money is deposited with the court, notifying any eligible victim or legal representative of an eligible victim that moneys are available to satisfy judgments pursuant to this section.

History. Acts 1985, No. 382, §§ 1-4; 1985, No. 401, §§ 1-4; A.S.A. 1947, §§ 43-2357 — 43-2360; Acts 2013, No. 1426, § 2.

Amendments. The 2013 amendment, in (a)(1), substituted "benefit economically" for "reenact the crime by use of any book, motion picture, magazine article, radio or television presentation, live entertainment, or any live or recorded presentation, or from the expression of his or her thoughts, opinions, or emotions," "in which" for "wherein," and inserted "for the crime"; inserted (a)(2) and (b)(2); redesignated former (a)(2) as present (a)(3); and, in (b)(1), inserted "or to pay for already rendered legal representation," "or has been unable to" and "legal."

Subchapter 4 — Execution of Sentence — Confinement

SECTION.

16-90-402. Delivery of defendant and copy of judgment to proper officials.

(a)(1) In executing a judgment of confinement, the county sheriff shall deliver the defendant with a certified standardized copy of the

sentencing order to the Department of Correction, Department of Community Correction, or to another detention facility, as indicated in the sentencing order.

(2) If electronic filing of court records has been implemented by the circuit clerk in the county where the defendant's conviction occurred, the standardized copy of the sentencing order may be electronically transmitted by the circuit clerk to the Department of Correction, the Department of Community Correction, or to another detention facility, as indicated in the sentencing order.

(b) The standardized copy of the sentencing order shall be developed by representatives from the Department of Correction, the Administrative Office of the Courts, the Arkansas Sentencing Commission, and the Prosecutor Coordinator's office.

History. Crim. Code, § 293; C. & M. Dig., § 3264; Pope's Dig., § 4109; Acts 1985, No. 975, § 1; A.S.A. 1947, § 43-2602; Acts 2013, No. 1335, § 2.

Amendments. The 2013 amendment rewrote (a)(1) and (b); and added (a)(2).

Subchapter 5 — Execution of Sentence — Death Penalty

16-90-502. Conduct of execution.

CASE NOTES

Public Access.

Mere fact that subdivision (d)(2) of this section requires that between six to twelve respectable citizens be present at an execution to verify that the execution was conducted in compliance with § 5-4-617(a)(1) does not transform executions, which subdivision (d)(1) of this section states are private, into a public proceeding comparable to a criminal trial. Because Arkansas does not have an enduring tradition of public executions, the mere fact that full public access to executions could play a significant role in the proper functioning of capital punishment and could better inform the public debate about execution by lethal injection is not a sufficient basis for reading a right of public access to executions into U.S. Const., Amend. I. Arkansas Times, Inc. v. Norris, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 3500 (E.D. Ark. Jan. 7, 2008).

42 U.S.C.S. § 1983 suit challenging the Arkansas Department of Correction's (ADC) lethal injection procedures was dismissed under Fed. R. Civ. P. 12(b)(6): (1) in the suit, a newspaper publisher, a newspaper editor, and a journalists' society challenged the ADC's legal injection procedures, claiming that the procedures violated their U.S. Const., Amend. I rights because those procedures did not open up the entire execution process to public view; (2) subdivision (d)(1) of this section made clear that executions were private, and not public, proceedings; (3) the U.S. Supreme Court had not recognized a First Amendment right of access to executions and had held that neither the public nor the media had a U.S. Const., Amends. I, XIV, right to access private areas of prisons; and (4) the fact that § 5-4-617(a)(1) required the presence of witnesses to verify that executions were conducted in compliance with § 5-4-617(a)(1) did not transform executions into public proceedings or render them comparable to criminal trials, in which full public access was constitutionally required. Arkansas Times, Inc. v. Norris, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 3500 (E.D. Ark. Jan. 7, 2008).

Subchapter 6 — Expungement of Record

Effective Dates. Acts 3023, No. 1460, § 17. Effective on and after January 1, 2014.

16-90-601. Minor felony offenders subsequently pardoned for offense. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 5, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

16-90-602. Minor nonviolent felony offenders — Petition. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 5, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

16-90-603. Minor felony offenders — Expungement of record. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 5, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

16-90-605. Governor's pardon — Court order — Exclusions. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 6, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

Subchapter 7 — Crime Victims Reparations

Effective Dates. Acts 2011, No. 11, § 2: Feb. 7, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Attorney General has immediate staffing needs in other areas of the agency; and that this act is immediately necessary because it will allow the Attorney General the flexibility to assign existing staff to work in other areas of the agency in addition to their responsibilities for the Crime Victims Reparations program. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-90-706. Powers of board — Logistical support.

(a)(1) The Crime Victims Reparations Board shall have:

(A) Power to award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met; and

(B) Authority to award the reparations to the claimant or directly to the provider of services.

(2) The board shall:

(A) Hear and determine all matters relating to claims for reparations, including having the power to reinvestigate or reopen claims without regard to statutes of limitation; and

(B)(i) Have discretion to act in a panel of three (3) or more members.

(ii) This panel may exercise the powers granted to the board.

(3) The board shall have the power to subpoena witnesses and compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings, and receive relevant evidence.

(4)(A) The board shall be provided such office, support staff, and secretarial services as necessary by the office of the Attorney General.

(B) The support staff and secretarial services described in subdivision (a)(4)(A) of this section may also be assigned by the Attorney General to engage in additional legal work in other areas that do not involve crime victims reparations.

(b) In addition to any other powers and duties specified elsewhere in this subchapter, the board may:

(1) Regulate its own procedure, except as otherwise provided in this subchapter;

(2) Adopt rules and regulations to implement the provisions of this subchapter;

(3) Define any term not defined in this subchapter;

(4) Prescribe forms necessary to carry out the purposes of this subchapter;

(5) Request access to any reports of investigations or other data necessary to assist the board in making a determination of eligibility for reparations under the provisions of this subchapter;

(6) Take judicial notice of general, technical, and scientific facts within its specialized knowledge; and

(7) Publicize the availability of reparations and information regarding the filing of claims for reparations.

History. Acts 1987, No. 817, §§ 5, 6; 2011, No. 11, § 1.

Amendments. The 2011 amendment added the (a)(4)(A) designation and (a)(4)(B).

16-90-717. Crime Victims Reparations Revolving Fund.

There is created in the State Treasury a revolving fund for the Crime Victims Reparations Board to be designated the "Crime Victims Reparations Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all moneys

received by the Crime Victims Reparations Board from any source including moneys applied for and received from any state, federal, or private source. All interest earned as a result of investing moneys in the Crime Victims Reparations Revolving Fund shall be paid into the fund and not into the general revenues of this state. All moneys accruing to the credit of the fund are appropriated and may be budgeted and expended by the board for the purpose of implementing the provisions of this subchapter and the provisions of the sexual assault statutes, §§ 12-12-401 — 12-12-404.

History. Acts 1987, No. 817, § 20; 1991, No. 396, § 4.

A.C.R.C. Notes. Acts 2013, No. 1443, § 60, provided: "YEARLY FUND TRANSFERS. On July 1, 2010 and each July 1, thereafter, if the fund balance of the Crime Victims Reparation Revolving Fund falls below one million dollars ($1,000,000), the Chief Fiscal Officer of the State may transfer on his or her books and those of the State Treasurer and the Auditor of the State a sum not to exceed one million dollars ($1,000,000) or so much thereof as is available from fund balances that exceed seven million dollars ($7,000,000) as determined by the Chief Fiscal Officer of the State, from the State Administration of Justice Fund to the Crime Victims Reparations Revolving Fund to provide funds for personal services, operating expenses and claims for the Office of the Attorney General — Crime Victims Reparations Program.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Subchapter 8 — Sentencing Guidelines

SECTION.

16-90-801. Statement of sentencing policy.

CASE NOTES

Cited: Barritt v. State, 372 Ark. 395, 277 S.W.3d 211 (2008).

16-90-802. The Arkansas Sentencing Commission.

(a) There is hereby created the Arkansas Sentencing Commission, the purpose of which is to evaluate the effect of sentencing laws, policies, and practices on the criminal justice system, to make appropriate and necessary revision to the sentencing standards, and to make recommendations to the legislature on proposed changes of sentencing laws, policies, and practices.

(b)(1) The commission shall be composed of nine (9) voting members and two (2) advisory members.

(2)(A) One (1) advisory member shall be appointed by and serve at the pleasure of the chair of the Senate Judiciary Committee.

(B) One (1) advisory member shall be appointed by and serve at the pleasure of the chair of the House Judiciary Committee.

(3) The voting members of the commission shall be composed of:

(A) Three (3) circuit judges;

(B) Two (2) prosecuting attorneys;

(C) Two (2) public defenders or private attorneys whose practices consist primarily of criminal defense work; and

(D) Two (2) private citizen members.

(c)(1)(A) The Governor shall appoint the voting members of the commission.

(B) All voting members shall serve for a term of five (5) years, unless they resign or are removed. Members shall serve until their replacements are appointed. Vacancies occurring before the expiration of a term shall be filled in the manner provided for members first appointed.

(2) The Governor shall select a chair to serve at his or her will.

(3) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) In furtherance of its purpose, the commission shall have the following powers and duties:

(1)(A) The commission shall adopt an initial sentencing standards grid and an offense seriousness reference table based upon the statutory parameters and additional data and information gathered prior to January 1, 1994.

(B) The commission shall also set the percentage of time within parameters set by law to be served for offenses at each seriousness level prior to any type of transfer or release;

(2)(A) The commission shall periodically review and may revise the voluntary sentencing standards.

(B) Any revision of the standards shall be in compliance with provisions applicable to rule making contained in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(C) Any revision of the standards shall become effective as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(D)(i) The revised standards will be in effect unless modified by the General Assembly at its next session or until revised again by the commission.

(ii) Any revisions by the commission shall be within the statutory parameters set for the various crime classes;

(3) The commission may review and make recommendations for revision of the Community Punishment Act, § 16-93-1201 et seq., target group to the General Assembly such that nonviolent offenses and offenders are routinely handled in community punishment programs;

(4)(A) The commission shall be in charge of strategic planning for a balanced correctional plan for the state.

(B) The commission shall develop such a plan in conjunction with the Board of Corrections.

(C) The commission shall monitor compliance with sentencing standards, assess their impact on the correctional resources of the state with the assistance of the board, and determine if the standards further the adopted sentencing policy goals of the state;

(5) The commission may review the classifications of crimes and sentences and make recommendations for change when supported by information that change is advisable to further the adopted sentencing policy goals of the state;

(6)(A) The commission shall develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length.

(B) The commission shall prepare and submit to the General Assembly a report on any such legislation prior to its adoption;

(7)(A)(i) All courts having criminal jurisdiction of felony crimes shall provide to the commission in a timely manner all information deemed necessary by the commission.

(ii) Such information shall be in the form determined necessary by the commission.

(B) The commission shall have the authority to collect from any state or local governmental entity information, data in electronic or in other usable form, reports, statistics, or such other material which relates to sentencing laws, policies, and practices, or impacts on correctional resources or is necessary to carry out the commission's functions.

(C) The commission may coordinate its data collection with the Administrative Office of the Courts, the Arkansas Crime Information Center, the various circuit clerks of the state, and the various state and local correctional agencies;

(8) Under its duties outlined in this section, the commission shall be a criminal justice agency, as defined in § 12-12-1001(8), as its powers and duties include:

(A) Determining transfer eligibility;

(B) Gathering, analyzing, and disseminating criminal history information as it relates to sentencing practices, dispositions, and release criteria; and

(C) Determining the appropriate use of correctional and rehabilitative resources of the state;

(9)(A) Produce annual reports regarding compliance with sentencing guidelines, including the application of voluntary presumptive standards, § 16-90-803, and departures from the standards, § 16-90-804.

(B) The report shall include:

(i) Data collected from each county; and

(ii) Both a county-by-county and statewide accounting of the results including without limitation:

(a) Sentences to the Department of Correction and Department of Community Correction;

(b) The average sentence length for sentences by offense type and severity level according to the sentencing guidelines;

(c) The percentage of sentences that are an upward departure from the sentencing guidelines; and

(d) The average number of months above the recommended sentence for those sentences described in subdivision (d)(9)(B)(ii)(*c*).

(C) The report filed each year after the initial report submitted under this section shall include data from prior years;

(10) Prepare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to judges, prosecuting attorneys and their deputies, and public defenders and their deputies, as so required; and

(11)(A) The commission shall collaborate with the Administrative Office of the Courts to develop and implement an integrated sentencing commitment and departure form that shall include:

(i) Demographic information including the race and ethnicity of both the offender and the victim or victims;

(ii) The placement decision;

(iii) Sentence length;

(iv) Any departure from the sentencing guidelines on placement and sentence length;

(v) The number of months above or below the presumptive sentence;

(vi) Justification for the departure; and

(vii) A signature space for the judge and the prosecuting attorney to sign off on the contents of the form.

(B) The commission shall begin using the new form on January 1, 2012.

(C)(i) Forms are to be collected annually and sent to the Administrative Office of the Courts.

(ii) Data from the forms shall be collected and submitted to the Chair of the House Judiciary Committee and the Chair of the Senate Judiciary Committee.

(e)(1) The commission shall meet no less than quarterly.

(2)(A) The commission shall submit to the Governor, the General Assembly, and the Arkansas Judicial Council a biennial report three (3) months prior to the convening of the regular session.

(B) The report shall include a summary of the commission proceedings and recommendations for legislative and administrative action.

(f)(1) The commission shall employ an executive director from candidates presented to it by the chair.

(2) The executive director shall have appropriate training and experience to assist the commission in the performance of its duties.

(3) The executive director shall be responsible for compiling the work of the commission and drafting suggested legislation incorporating the commission's findings for submission to the General Assembly.

(g)(1) Subject to the approval of the chair, the executive director shall employ such other staff and shall contract for services as are necessary to assist the commission in the performance of its duties, and as funds permit.

(2) The executive director shall ensure that appropriate budgetary measures are taken to employ enough staff or contract for expert services and to purchase the technology needed to compile and process sentencing data from all judicial districts in a timely manner.

History. Acts 1993, No. 532, § 4; 1993, No. 550, § 4; 1995, No. 1170, § 6; 1997, No. 250, § 119; 2001, No. 1288, § 14; 2009, No. 962, § 36; 2011, No. 570, §§ 78, 79.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2009 amendment substituted "regular session" for "next regularly scheduled legislative session" in (e)(2)(A).

The 2011 amendment added (d)(9) through (d)(11); and added the (g)(1) designation and (g)(2).

16-90-803. Voluntary presumptive standards.

RESEARCH REFERENCES

ALR. Construction and Application of United States Sentencing Guideline § 2A2.1(b)(1), 18 U.S.C.A., Providing Enhancement for Attempted Murder or Assault with Intent to Commit Murder Dependent Upon Nature or Degree of Injury. 30 A.L.R. Fed. 2d 385.

Construction and Application of "Official Victim" Sentencing Enhancement of U.S.S.G. § 3A1.2(c) Concerning Law Enforcement Officers and Prison Officials. 32 A.L.R. Fed. 2d 371.

Construction and Application of U.S.S.G. § 3B1.1(s) Providing Sentencing Enhancement for Organizer or Leader of Criminal Activity — Fraud Offenses. 32 A.L.R. Fed. 2d 445.

Downward Adjustment for Acceptance of Responsibility Under U.S.S.G. § 3E1.1, 18 USCS — Fraud Offenses. 33 A.L.R. Fed. 2d 477.

Construction and Application of U.S.S.G. § 5H1.3, Concerning Mental and Emotional Conditions as Ground for Sentencing Departure. 34 A.L.R. Fed. 2d 457.

Construction and Application of U.S.S.G. § 3B1.1(b) Providing Sentencing Enhancement For Manager or Supervisor of Criminal Activity — Drug Offenses — Cocaine. 35 A.L.R. Fed. 2d 467.

Validity, Construction, and Application of U.S.S.G. § 5K2.8, Providing for Upward Sentence Departure for Extreme Conduct. 36 A.L.R. Fed. 2d 95.

Construction and Application of U.S.S.G. § 2X1.1, Providing Sentencing Guideline for Conspiracy Not Covered by Specific Offense Guideline. 37 A.L.R. Fed. 2d 449.

Construction and Application of U.S.S.G., § 3B1.1(a), 18 USCS, Providing Sentencing Enhancement for Organizer or Leader of Criminal Activity — Drug Offenses. 43 A.L.R. Fed. 2d 365.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

16-90-804. Departures from the standards.

RESEARCH REFERENCES

ALR. Construction and Application of United States Sentencing Guideline § 2A2.1(b)(1), 18 U.S.C.A., Providing Enhancement for Attempted Murder or Assault with Intent to Commit Murder Dependent Upon Nature or Degree of Injury. 30 A.L.R. Fed. 2d 385.

Construction and Application of "Official Victim" Sentencing Enhancement of U.S.S.G. § 3A1.2(c) Concerning Law Enforcement Officers and Prison Officials. 32 A.L.R. Fed. 2d 371.

Construction and Application of U.S.S.G. § 3B1.1(s) Providing Sentencing Enhancement for Organizer or Leader of Criminal Activity — Fraud Offenses. 32 A.L.R. Fed. 2d 445.

Downward Adjustment for Acceptance of Responsibility Under U.S.S.G. § 3E1.1, 18 USCS — Fraud Offenses. 33 A.L.R. Fed. 2d 477.

Construction and Application of U.S.S.G. § 5H1.3, Concerning Mental and Emotional Conditions as Ground for Sentencing Departure. 34 A.L.R. Fed. 2d 457.

Construction and Application of

U.S.S.G. § 3B1.1(b) Providing Sentencing Enhancement For Manager or Supervisor of Criminal Activity — Drug Offenses — Cocaine. 35 A.L.R. Fed. 2d 467.

Validity, Construction, and Application of U.S.S.G. § 5K2.8, Providing for Upward Sentence Departure for Extreme Conduct. 36 A.L.R. Fed. 2d 95.

Construction and Application of U.S.S.G. § 2X1.1, Providing Sentencing Guideline for Conspiracy Not Covered by Specific Offense Guideline. 37 A.L.R. Fed. 2d 449.

Construction and Application of U.S.S.G., § 3B1.1(a), 18 USCS, Providing Sentencing Enhancement for Organizer or Leader of Criminal Activity — Drug Offenses. 43 A.L.R. Fed. 2d 365.

Ark. L. Rev. Note, Hurricane Blakely and the Calm After the Storm Found in Booker, 58 Ark. L. Rev. 449.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

Annual Survey of Case Law: Criminal Law, 29 U. Ark. Little Rock L. Rev. 849.

CASE NOTES

Cited: Burton v. State, 367 Ark. 109, 238 S.W.3d 111 (2006); Bell v. State, 371 Ark. 375, 266 S.W.3d 696 (2007).

Subchapter 9 — Expungement and Sealing of Criminal Records

Effective Dates. Acts 2013, No. 282, § 17: Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1301, § 2. Effective on and after January 1, 2014.

Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-90-901. Definition. [Repealed effective January 1, 2014].

(a)(1) As used in §§ 5-64-407, 16-90-601, 16-90-602, 16-90-605, 16-93-301 — 16-93-303, 16-93-314, and 16-93-1207, "expunge" shall mean that the record or records in question shall be sealed, sequestered, and

treated as confidential in accordance with the procedures established by this subchapter.

(2) Unless otherwise provided by this subchapter, "expunge" shall not mean the physical destruction of any records.

(3) No person who is found guilty of or pleads guilty or nolo contendere to a sexual offense as defined in this section and in which the victim was under the age of eighteen (18) years shall be eligible to have the offense expunged under the procedures set forth in this subchapter.

(b) For purposes of this subchapter, "sexual offense" shall be defined as conduct prohibited by § 5-14-101 et seq., §§ 5-26-202, 5-27-602, 5-27-603, 5-27-605, 16-93-303(a)(1)(B), and any other subsequently enacted criminal law prohibiting sexual conduct with a child.

History. Acts 1995, No. 998, § 7; 1999, No. 1407, § 3; 2003, No. 1390, § 7; 2003, No. 1753, § 1; 2011, No. 570, § 80.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 7, effective January 1, 2014.

Amendments. The 2011 amendment, in (a)(1), deleted "5-4-311" following "§§ 5-64-407" and inserted "16-93-314."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

CASE NOTES

Analysis

Eligibility.
Physical Destruction Not Required.

Eligibility.

Defendant's property crime convictions from 1989 were ineligible for expungement under Act 531, codified as this section, because Act 531 was not enacted until 1993 and was not in effect on the date of defendant's crimes in April 1989. Therefore, the circuit court erred in entering an order to seal defendant's convictions. State v. Tyler, 2010 Ark. 307, — S.W.3d — (2010).

Physical Destruction Not Required.

Physical destruction of records is not contemplated by Arkansas law; therefore, summary judgment was properly granted to the Arkansas Crime Information Center (ACIC) and other parties in an action alleging a violation of an arrestee's civil rights because there was no requirement that the ACIC physically destroy ex-

punged records under § 16-90-901(a)(1)(2)., and dissemination of the expunged records was allowed to criminal justice agencies for criminal justice purposes under § 12-12-1008. Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

16-90-902. Effect of expungement. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 7, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

CASE NOTES

Analysis

In General.
Attorney Discipline.

In General.

Trial court properly admitted an appellant's prior conviction for sexually abusing his step-granddaughter under the pedophile exception to Ark. R. Evid. 404(b) where he failed to include in the record either a petition to seal, order to seal, or notice of expungement, as required by § 16-90-902 (Supp. 1995), or a court order of expungement, as required by former § 16-93-303(b)(1) (amended 1995). Davidson v. State, 363 Ark. 86, 210 S.W.3d 887 (2005).

Circuit court did not err in affirming the decision of the Arkansas State Board of Education to deny an applicant's waiver request for a certified teacher's license pursuant to § 6-17-410(c) because given the plain meaning of § 6-17-410(d)(1)(A)(v), there was no abuse of discretion in the Board's decision that the phrase "expunged or pardoned conviction" related to both any sexual or physical abuse offense committed against a child and any offense in § 6-17-410(c); when construing § 6-17-410(c) just as it reads and giving meaning and effect to every word within the statute, it is clear that the General Assembly intended for all who have pled guilty or nolo contendere to a disqualifying offense to be prohibited from receiving a teaching license, regardless of whether the individual's record has since been expunged. Landers v. Ark. Dep't of Educ., 2010 Ark. App. 312, 374 S.W.3d 795 (2010).

Trial court did not err by admitting defendant's prior conviction for felony possession of drug paraphernalia into evidence as proof on a charge of possession of a firearm by a felon (FIP) because § 5-73-103(a)(1) specifically provided that defendant's expunged felony conviction could be used as proof on his FIP charge; although still uncodified, 1995 Ark. Acts. 595, § 1 indicates legislative intent for an expunged felony conviction to remain a conviction for the purposes of possession of a firearm by a felon. Smith v. State, 2011 Ark. App. 539, — S.W.3d — (2011).

Attorney Discipline.

Circuit court's order to dismiss the attorney's conviction and to seal the record of the criminal proceeding was not binding on the Arkansas Supreme Court for purposes of the disciplinary proceeding against the attorney because the court could not be bound by an expungement order made pursuant to a legislative enactment when engaged in its constitutional mandate to regulate and discipline attorneys at law. Ligon v. Davis, 2012 Ark. 440, — S.W.3d —, 2012 Ark. LEXIS 470 (Nov. 29, 2012).

Cited: Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

16-90-903. Release of sealed records. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 7, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-90-904. Procedure for sealing of records. [Repealed effective January 1, 2014.]

(a)(1) An individual who is eligible to have an offense expunged may file a uniform petition to seal records, as described in § 16-90-905 [repealed effective January 1, 2014], in the circuit court or district court in the county where the offense was committed and in which the person was convicted for the offense he or she is now petitioning to have expunged.

(2)(A) Unless the circuit court or district court is presented with and finds that there is clear and convincing evidence that a misdemeanor conviction should not be expunged under this subchapter, the circuit court or district court shall expunge the misdemeanor conviction for a person after the person files a petition as described in this section, except for the following offenses:

(i) Negligent homicide, § 5-10-105, if it was a Class A misdemeanor;

(ii) Battery in the third degree, § 5-13-203;

(iii) Indecent exposure, § 5-14-112;

(iv) Public sexual indecency, § 5-14-111;

(v) Sexual assault in the fourth degree, § 5-14-127;

(vi) Domestic battering in the third degree, § 5-26-305; or

(vii) Driving while intoxicated, § 5-65-103.

(B) An offense listed in subdivisions (a)(2)(A)(i)-(vii) of this section:

(i) May be expunged after a period of five (5) years has elapsed since the completion of the person's sentence for that misdemeanor conviction; and

(ii) Shall be expunged after the period of time required in subdivision (a)(2)(B)(i) of this section unless the circuit court or district court is presented with and finds that there is clear and convincing evidence that the misdemeanor conviction should not be expunged under this subchapter.

(3)(A) The circuit clerk or district court clerk shall collect a fee of fifty dollars ($50.00) for filing the uniform petition to seal records unless the petitioner is indigent and the fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure.

(B) The circuit clerk or district court clerk shall remit:

(i) One-half (½) of the fee by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the State Administration of Justice Fund; and

(ii) The remaining one-half (½) of the fee remitted as follows:

(a) If collected in circuit court, to the county treasurer to be deposited into the county general fund by the tenth day of each month;

(b) If collected in district court, to the treasury of each political subdivision that contributes to the expenses of the district court

based on the percentage of the expenses contributed by the political subdivision by the tenth day of each month; or

(c) In a district court funded solely by the county, to the county treasurer of the county in which the district court is located to be deposited into the county general fund by the tenth day of each month.

(b)(1)(A) A copy of the uniform petition for sealing of the record shall be served upon the prosecuting authority for the county in which the petition is filed, the arresting agency, and any city court or district court where the individual appeared before the transfer of the case to circuit court.

(B) It shall not be necessary to make any agency a party to the action.

(2)(A) Any person desiring to oppose the sealing of the record shall file a notice of opposition with the court setting forth reasons within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B) If no opposition is filed, the court may grant the petition.

(C) If notice of opposition is filed, the court shall set the matter for a hearing.

(c) If the court determines that the record should be sealed, the uniform order, as described in § 16-90-905 [repealed effective January 1, 2014], shall be entered and filed with the circuit clerk.

(d) The circuit clerk shall certify copies of the uniform order to the prosecuting attorney who filed the underlying charges, the arresting agency, any city court or district court where the individual appeared before the transfer of the case to circuit court, the Administrative Office of the Courts, and the Arkansas Crime Information Center.

(e)(1) The circuit clerk and the clerk of any city court or district court where the individual appeared before the transfer of the case to circuit court shall remove all petitions, orders, docket sheets, and documents relating to the case, place them in a file, and sequester them in a separate and confidential holding area within the clerk's office.

(2)(A) A docket sheet shall be prepared to replace the sealed docket sheet.

(B) The replacement docket sheet shall contain the docket number, a statement that the case has been sealed, and the date that the order to seal the record was issued.

(3) All indices to the file of the individual with a sealed record shall be maintained in a manner to prevent general access to the identification of the individual.

(f) Upon notification of an order to seal records, all circuit clerks, city clerks, district clerks, arresting agencies, and other criminal justice agencies maintaining such conviction records in a computer-generated database shall either segregate the entire record into a separate file or ensure by other electronic means that the sealed record shall not be available for general access unless otherwise authorized by law.

History. Acts 1995, No. 998, § 7; 2009, No. 477, § 1; 2011, No. 626, § 3; 2013, No. 282, § 10.

A.C.R.C. Notes. Effective January 1, 2014, Acts 2013, No. 1460, § 7, repeals § 16-90-905 referred to in subdivision (a)(1) and subsection (c) of this section.

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 7, effective January 1, 2014.

Amendments. The 2009 amendment subdivided (b)(1) and inserted "and any city court or district court where the individual appeared before the transfer of the case to circuit court" in (b)(1)(A); inserted "any city court or district court where the individual appeared before the transfer of the case to circuit court" in (d); inserted "city clerks, district clerks" in (f); and made related and minor stylistic changes.

The 2011 amendment substituted "in the circuit or district court in the county where the crime was committed and in which the person was convicted for the offense he or she is now petitioning to have expunged" for "with the circuit court in the county where the crime was committed" in (a); and added (a)(2).

The 2013 amendment substituted "offense" for "crime" in (a)(1); inserted "circuit court or district" in the introductory language of (a)(2)(A) and in (a)(2)(B)(ii); inserted "misdemeanor" in (a)(2)(B)(i); and added (a)(3).

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

CASE NOTES

Cited: Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

16-90-905. Uniform petition and order to seal records. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 7, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

CASE NOTES

Analysis

Attorney Discipline.
Review.

Attorney Discipline.

Circuit court's order to dismiss the attorney's conviction and to seal the record of the criminal proceeding was not binding on the Arkansas Supreme Court for purposes of the disciplinary proceeding against the attorney because the court could not be bound by an expungement order made pursuant to a legislative enactment when engaged in its constitutional mandate to regulate and discipline attorneys at law. Ligon v. Davis, 2012 Ark. 440, — S.W.3d —, 2012 Ark. LEXIS 470 (Nov. 29, 2012).

Review.

Circuit court erred by sealing the applicant's conviction for negligent-homicide pursuant to § 5-10-105, because given the plain meaning of § 5-10-105, the statute lacked any provision for expungement. State v. Martin, 2012 Ark. 191, — S.W.3d — (2012).

Cited: Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

16-90-906. When no guilty verdict. [Repealed effective January 1, 2014.]

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 7, effective January 1, 2014.

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

CASE NOTES

Physical Destruction Not Required.

Physical destruction of records is not contemplated by Arkansas law; therefore, summary judgment was properly granted to the Arkansas Crime Information Center (ACIC) and other parties in an action alleging a violation of an arrestee's civil rights because there was no requirement that the ACIC physically destroy expunged records under § 16-90-901(a)(1)(2)., and dissemination of the expunged records was allowed to criminal justice agencies for criminal justice purposes under § 12-12-1008. Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

16-90-907. Eligibility to file a uniform petition to seal a misdemeanor offense or violation. [Effective January 1, 2014.]

(a) A person is eligible to file a uniform petition under this subchapter to seal his or her record of a misdemeanor or violation sixty (60) days after:

(1) The completion of his or her sentence for the misdemeanor or violation, including full payment of restitution;

(2) Full payment of court costs; and

(3) Full payment of driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest or conviction for the misdemeanor or violation.

(b) There is not a limit to the number of times a person may file a uniform petition to seal his or her record of a misdemeanor or violation, except that the person may not file:

(1) A new uniform petition to seal a criminal offense listed in § 16-90-904(a)(2)(A) [repealed effective January 1, 2014] until after a

period of five (5) years has elapsed since the completion of the person's sentence for the conviction;

(2) A new uniform petition to seal a criminal offense listed in § 16-90-904(a)(2)(A) [repealed effective January 1, 2014] before one (1) year from the date of the order denying the previous uniform petition;

(3) A new uniform petition to seal any other misdemeanor or violation before ninety (90) days from the date of an order denying a uniform petition to seal the misdemeanor or violation;

(4) A new uniform petition to seal a misdemeanor or violation under this section if an appeal of a previous denial of a uniform petition to seal a misdemeanor or violation for the same misdemeanor or violation is still pending; or

(5) A new uniform petition to seal a misdemeanor or violation under this section if:

(A) The person was a holder of a commercial driver license or commercial learner's permit at the time the misdemeanor or violation was committed; and

(B) The misdemeanor or violation was a traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation, committed in any type of motor vehicle.

(c) Except as provided in subsection (b) of this section, a person is eligible to file a uniform petition to seal a misdemeanor or violation under this section even if his or her misdemeanor or violation occurred before January 1, 2014.

History. Acts 2013, No. 1301, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), this section is likely superseded by Acts 2013, No. 1460, §§ 7 and 9, which enacted the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., and repealed §§ 16-90-901 — 16-90-906 effective January 1, 2014.

Effective Dates. Acts 2013, No. 1301, § 2. Effective on and after January 1, 2014.

Subchapter 12 — Encouragement of Treatment and Rehabilitation of Drug Users

SECTION.

16-90-1201. Expungement of record. [Repealed effective January 1, 2014.]

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-90-1201. Expungement of record. [Repealed effective January 1, 2014.]

(a) The record of a felony offense for possession of a controlled substance or counterfeit substance in violation of § 5-64-419, § 5-64-441, or the former § 5-64-401(c) shall be expunged under this section.

(b) This section shall apply if:

(1) The intake officer appointed by the court determines that the defendant has a drug addiction and recommends the defendant as a candidate for residential drug treatment;

(2) The court places the defendant on probation and includes as part of the terms and conditions of the probation that:

(A) The defendant successfully complete a drug treatment program approved by the court; and

(B) The defendant remain drug free until successful completion of probation; and

(3) The defendant successfully complete the terms and conditions of the probation.

(c) Nothing in this section shall require or compel any court of this state to order probation under this section, nor shall any defendant be availed the benefit of this section as a matter of right.

(d) This section shall be supplemental to all other laws concerning probation and expungement.

(e) As used in this section, the procedure, effect, and definition of "expungement" shall be in accordance with that established in § 16-90-901 et seq.

History. Acts 2001, No. 1778, § 1; 2011, No. 570, §, 81.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Publisher's Notes. This section is repealed by Acts 2013, No. 1460, § 8, effective January 1, 2014.

Amendments. The 2011 amendment, in (a), inserted "§ 5-64-419, § 5-64-441, or the former."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

CASE NOTES

Expungement of Prior Felony.

Trial court did not err by admitting defendant's prior conviction for felony possession of drug paraphernalia into evidence as proof on a charge of possession of a firearm by a felon (FIP) because § 5-73-103(a)(1) specifically provided that defendant's expunged felony conviction could be used as proof on his FIP charge; although still uncodified, 1995 Ark. Acts. 595, § 1 indicates legislative intent for an expunged felony conviction to remain a conviction for the purposes of possession of a firearm by a felon. Smith v. State, 2011 Ark. App. 539, — S.W.3d — (2011).

Subchapter 13 — Earned Discharge and Completion of Sentence

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-90-1301. Scope.

This subchapter shall apply to all applicable felony sentences entered on or after July 27, 2011.

History. Acts 2011, No. 570, § 82.

16-90-1302. Applicable felonies.

(a) The following felony offenses shall be eligible for earned discharge and completion of the sentence under this subchapter:

(1) All Class D, Class C, and Class B felonies, except:

(A) An offense for which sex offender registration is required under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(B) A felony involving violence under § 5-4-501(d)(2);

(C) Kidnapping, § 5-11-102;

(D) Manslaughter, § 5-10-104; or

(E) Driving while intoxicated, § 5-65-103; and

(2) All Class A felony controlled substance offenses, § 5-64-401 et seq.

(b) A Class Y felony shall not be eligible for earned early discharge and completion of sentence under this subchapter.

History. Acts 2011, No. 570, § 82.

16-90-1303. Procedure.

(a) If a person is incarcerated for an eligible felony, whether by an immediate commitment or after his or her probation is revoked, and after he or she is moved to community supervision through parole or transfer by the Parole Board, or if he or she is placed on probation, he or she is immediately eligible to begin earning daily credits that shall count toward reducing the number of days he or she is otherwise required to serve until he or she has completed the sentence.

(b)(1) Credits equal to thirty (30) days per month for every month that the offender complies with court-ordered conditions and a set of predetermined criteria established by the Department of Community

Correction in consultation with judges, prosecuting attorneys, and defense counsel shall accrue while the person is on parole or probation.

(2) The department shall calculate the number of days the person has remaining to serve on parole or probation before that person completes his or her sentence.

(3) The number of days shall be recalculated on a monthly basis to reflect the application of any credits earned under this subchapter.

(c)(1)(A) The department shall have sole discretion to forfeit any credits a person earns under this subchapter unless otherwise provided for in this section.

(B) The award or forfeiture of any credits earned under this subchapter is not subject to appeal or judicial review.

(2) A person convicted of another felony offense while on parole or probation may result in the forfeiture of any credits earned under this subchapter.

History. Acts 2011, No. 570, § 82.

16-90-1304. Application.

(a) When a person has accumulated enough days, through a combination of served and earned time equal to the total number of days of the sentence imposed by the sentencing court, he or she shall have attained completion of his or her sentence under this subchapter.

(b)(1) No less than forty-five (45) days before the discharge date, the Department of Community Correction shall submit notice to:

(A) The prosecuting attorney; and

(B) The Parole Board.

(2) Within thirty (30) days before the discharge date, the prosecuting attorney or the Parole Board may file a petition in the sentencing court stating any reasonable objection to early discharge under this subchapter warranting the forfeiture of earned-discharge credit.

(3) If a petition stating an objection under subdivision (b)(2) of this section is lodged, the department shall immediately suspend the discharge of the sentence pending a review of the evidence contained in the objection by the sentencing court.

(4) A review shall be conducted in the sentencing court within fourteen (14) days of the filing of the petition.

(5)(A) Upon the request of the prosecuting attorney or the Parole Board, the sentencing court shall consider the objections against the person based solely on the information contained in the petition.

(B) The sentencing court shall determine, based on a preponderance of the evidence, whether the person should not be discharged from the sentence because, if the information contained in the petition had been known to the Department of Community Correction, the department would have ordered the forfeiture of any of the discharge credit earned to that point or if insufficient evidence exists that would warrant the forfeiture of discharge credit.

(C) If the sentencing court finds sufficient evidence warranting a forfeiture of discharge credits, the department shall make the necessary forfeiture of earned discharge credit appropriate for the type of misconduct asserted in the objection.

(D)(i) If the sentencing court does not find sufficient evidence exists that warrants forfeiture of discharge credits, the department shall discharge the person immediately if the date upon which the completion of the sentence occurred has passed.

(ii) If the date for completion of the sentence has not occurred, the person shall return to the status held at the point the objection was filed.

(6) An appeal may not be taken by either party from the sentencing court's findings or the department's decision for early discharge.

History. Acts 2011, No. 570, § 82; 2013, No. 1335, § 3.

Amendments. The 2013 amendment substituted "forty-five (45)" for "seven (7)" in (b)(1).

16-90-1305. Notice and effect.

(a) Notice of the discharge of the person's sentence under this section shall be sent to the clerk of the sentencing court.

(b) The clerk of the court shall send notice to the Arkansas Crime Information Center.

(c) A person who earns discharge and completion of his or her sentence under this subchapter is considered as having completed his or her sentence in full and is not subject to parole or probation revocation for those sentences.

History. Acts 2011, No. 570, § 82.

Subchapter 14 — Comprehensive Criminal Record Sealing Act of 2013 [Effective January 1, 2014]

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-90-1401. Title. [Effective January 1, 2014.]

This subchapter shall be known and may be cited as the "Comprehensive Criminal Record Sealing Act of 2013".

History. Acts 2013, No. 1460, § 9.

16-90-1402. Intent. [Effective January 1, 2014.]

(a) The General Assembly recognizes that historically the laws of this state involving the procedure a person must follow to have his or her prior criminal history information sealed have been confusing, from the standpoint of both practicality and terminology.

(b) It is the intent of the General Assembly to provide in clear terms in what instances and, if applicable, how a person may attempt to have his or her criminal history information sealed.

History. Acts 2013, No. 1460, § 9.

16-90-1403. Scope. [Effective January 1, 2014.]

(a) This subchapter governs all proceedings involving the sealing of criminal records.

(b) Inconsistencies between this subchapter and any other sections within the Arkansas Code in existence January 1, 2014, are resolved in favor of this subchapter, except that this subchapter does not apply to:

(1) The Arkansas Drug Court Act, § 16-98-301 et seq.;

(2) Extended juvenile jurisdiction records under § 9-27-508, unless the records are considered adult criminal records under § 9-27-501 et seq; and

(3) The sealing of juvenile records.

(c)(1) A court may hear a proceeding under this subchapter only if a uniform petition is initially filed by the petitioner.

(2) A court may only use a uniform order if the court decides to seal a criminal record under this subchapter.

History. Acts 2013, No. 1460, § 9.

16-90-1404. Definitions. [Effective January 1, 2014.]

As used in this subchapter:

(1) "Completion of a person's sentence" means that the person, after being found guilty:

(A) Has paid his or her fine, court costs, or other monetary obligation as defined in § 16-13-701 in full, unless the obligation has been excused by the sentencing court;

(B) Served any time in county or regional jail, a Department of Community Correction facility, or a Department of Correction facility in full; and

(C) If applicable:

(i) Has been discharged from probation or parole;

(ii) Completed any suspended sentence;

(iii) Paid any court-ordered restitution;

(iv) Completed any court-ordered community service;

(v) Paid any driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense; and

(vi) Completed all other driver's license reinstatement requirements, if a driver's license suspension was imposed as a result of the person's arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense;

(2) "Conviction":

(A) Includes the following, after the final act of judgment:

(i) A plea of guilty or nolo contendere, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, by a person formally charged with an offense;

(ii) A finding of guilt, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, by a judge or jury after a trial;

(iii) A finding of guilt, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, after entry of a plea of nolo contendere;

(iv) A sentence of supervised probation on a felony charge;

(v) A suspended imposition of sentence, as defined in § 16-93-1202, with a fine;

(vi) A sentence under § 16-93-1201 et seq.;

(vii) A suspended sentence that is revocable and can subject the person to incarceration or a fine, or both; or

(viii) A finding of guilt of a person whose case proceeded under § 16-93-301 et seq., and who violated the terms and conditions of § 16-93-301 et seq.; and

(B) Does not include:

(i) An order nolle prosequi;

(ii) A suspended imposition of sentence, as defined in § 16-93-1202, with no fine;

(iii) An acquittal for any reason;

(iv) An order that the defendant enter a diversionary program that requires him or her to accomplish certain court-ordered objectives but that does not result in a finding of guilt if the program is successfully completed;

(v) A court-ordered probationary period under:

(a) The former § 5-64-413; or

(b) Section 16-93-301 et seq.;

(vi) The entry of a plea of guilty or nolo contendere without the court's making a finding of guilt or entering a judgment of guilt with the consent of the defendant or the resultant dismissal and discharge of the defendant as prescribed by § 16-93-301 et seq.;

(vii) The entry of a directed verdict by a court at trial; or

(viii) The dismissal of a charge either with or without prejudice;

(3) "Court" means a sentencing district court or sentencing circuit court, unless otherwise specifically identified;

(4)(A) "Seal" means to expunge, remove, sequester, and treat as confidential the record or records in question according to the procedures established by this subchapter.

(B) "Seal" does not include the physical destruction of a record of a conviction unless this subchapter requires the physical destruction of the record of a conviction;

(5) "Sentence" means the outcome formally entered by a court upon a person in criminal proceedings;

(6) "Sex offense" means:

(A) The same as defined in § 12-12-903; and

(B) A felony offense repealed by Acts 2001, No. 1738;

(7) "Uniform order" means a uniform order to seal a record described in § 16-90-1414; and

(8) "Uniform petition" means a uniform petition to seal a record described in § 16-90-1414.

History. Acts 2013, No. 1460, § 9.

A.C.R.C. Notes. Acts 2001, No. 1738, referred to in subdivision (6)(B) of this section, repealed the following felony offenses: carnal abuse in the first degree, former § 5-14-104, carnal abuse in the second degree, former § 5-14-105, carnal abuse in the third degree, former § 5-14-106, sexual abuse in the first degree, former § 5-14-108, violation of a minor in the first degree, former § 5-14-120, and violation of a minor in the second degree, former § 5-14-121.

16-90-1405. Eligibility to file a uniform petition to seal a misdemeanor offense or violation. [Effective January 1, 2014.]

(a) A person is eligible to file a uniform petition under this subchapter to seal his or her record of a misdemeanor or violation sixty (60) days after:

(1) The completion of his or her sentence for the misdemeanor or violation, including full payment of restitution;

(2) Full payment of court costs;

(3) Full payment of driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest or conviction for the misdemeanor or violation; and

(4) The completion of all other driver's license reinstatement requirements, if a driver's license suspension was imposed as a result of the person's arrest or conviction for the misdemeanor or violation.

(b) There is not a limit to the number of times a person may file a uniform petition to seal his or her record of a misdemeanor or violation, except that the person may not file:

(1) A new uniform petition to seal one (1) of the following criminal offenses until after a period of five (5) years has elapsed since the completion of the person's sentence for the conviction:

(A) Negligent homicide, § 5-10-105, if it was a Class A misdemeanor;

(B) Battery in the third degree, § 5-13-203;

(C) Indecent exposure, § 5-14-112;

(D) Public sexual indecency, § 5-14-111;

(E) Sexual assault in the fourth degree, § 5-14-127;

(F) Domestic battering in the third degree, § 5-26-305; or

(G) A misdemeanor violation of § 5-65-103;

(2) A new uniform petition to seal a criminal offense listed in subdivision (b)(1)(A) — (G) of this section before one (1) year from the date of the order denying the previous uniform petition;

(3) A new uniform petition to seal any other misdemeanor or violation before ninety (90) days from the date of an order denying a uniform petition to seal the misdemeanor or violation;

(4) A new uniform petition to seal a misdemeanor or violation under this section if an appeal of a previous denial of a uniform petition to seal a misdemeanor or violation for the same misdemeanor or violation is still pending; or

(5) A new uniform petition to seal a misdemeanor or violation under this section if:

(A) The person was a holder of a commercial driver license or commercial learner's permit at the time the misdemeanor or violation was committed; and

(B) The misdemeanor or violation was a traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation, committed in any type of motor vehicle.

(c) Except as provided in subsection (b) of this section, a person is eligible to file a uniform petition to seal a misdemeanor or violation under this section even if his or her misdemeanor or violation occurred before January 1, 2014.

History. Acts 2013, No. 1460, § 9.

16-90-1406. Felony convictions eligible for sealing. [Effective January 1, 2014.]

(a) Unless prohibited under § 16-90-1408, a person may petition a court to seal a record of a conviction after five (5) years has elapsed since the completion of the person's sentence for:

(1) A Class C felony or Class D felony;

(2) An unclassified felony;

(3) An offense under § 5-64-401 et seq. that is a Class A felony or Class B felony;

(4) Solicitation to commit, attempt to commit, or conspiracy to commit the substantive offenses listed in subdivisions (a)(1)-(3) of this section; or

(5) A felony not involving violence committed while the person was less than eighteen (18) years of age.

(b)(1)(A) The petitioner can have no more than one (1) previous felony conviction.

(B) For the sole purpose of calculating the number of previous felony convictions under this section, all felony offenses that were committed as part of the same criminal episode and for which the person was convicted are a single conviction.

(2) The fact that a prior felony conviction has been previously sealed shall not prevent its counting as a prior conviction for the purposes of this subsection.

History. Acts 2013, No. 1460, § 9.

16-90-1407. Special procedures for sealing a controlled substance possession conviction. [Effective January 1, 2014.]

A person may petition the court to seal a record of a conviction for possession of a controlled substance, § 5-64-419, or counterfeit substance, § 5-64-441, upon the completion of the person's sentence if, prior to sentencing:

(1) An intake officer appointed by the court, where applicable, determines that the person has a drug addiction and recommends the person as a candidate for residential drug treatment;

(2) The court places the person on probation and includes as part of the terms and conditions of the probation that:

(A) The person successfully complete a drug treatment program approved by the court; and

(B) The person remain drug-free until successful completion of probation; and

(3) The person successfully completes the terms and conditions of the probation.

History. Acts 2013, No. 1460, § 9.

16-90-1408. Felony convictions ineligible for sealing. [Effective January 1, 2014.]

(a) A record of a conviction of any of the following offenses is not eligible to be sealed under this subchapter:

(1) A Class Y felony, Class A felony, or Class B felony, except as provided in § 16-90-1406;

(2) Manslaughter, § 5-10-104;

(3) An unclassified felony if the maximum sentence of imprisonment for the unclassified felony is more than ten (10) years;

(4) A felony sex offense;

(5) A felony involving violence under § 5-4-501(d)(2); and

(6) A felony for which a person served any portion of his or her sentence as an inmate in the Department of Correction.

(b)(1) A felony traffic offense committed in any type of motor vehicle if the person was a holder of a commercial learner's permit or commercial driver license at the time the felony offense was committed is not eligible for sealing under this subchapter.

(2) As used in this subsection, "traffic offense" does not include a parking violation, vehicle weight violation, or vehicle defect violation.

History. Acts 2013, No. 1460, § 9.

16-90-1409. Sealing records of arrests. [Effective January 1, 2014.]

(a) A person may petition a district court or circuit court to seal a record of a prior arrest if charges have not been filed by the prosecuting attorney within one (1) year of the date of the arrest.

(b) The petition shall be filed in the county in which the arrest was made.

History. Acts 2013, No. 1460, § 9.

16-90-1410. Sealing records of nolle prosequi, dismissed cases, or cases when the disposition is an acquittal. [Effective January 1, 2014.]

(a) A person may petition to seal the records of a case in which there was for any reason:

(1) Entry of an order nolle prosequi upon motion of the prosecuting attorney after one (1) year has passed since the date of the entry of the order nolle prosequi;

(2) Entry of an order of dismissal;

(3) An acquittal, unless that acquittal was for reason of mental disease or defect under § 5-2-301 et seq.; or

(4) A decision by the prosecuting attorney not to file charges.

(b) The petition shall be filed in the court in which the order nolle prosequi or order of dismissal was entered.

History. Acts 2013, No. 1460, § 9.

16-90-1411. Sealing of records for a pardoned person — Pardons for youthful felony offenders. [Effective January 1, 2014.]

(a)(1) The Governor shall notify the court upon issuing a pardon, and the court shall issue an order sealing the record of a conviction of the person pardoned.

(2) The record of a conviction relating to the conviction of a person pardoned before July 15, 1991, shall be sealed upon the filing of a copy of the pardon with the court by the person.

(3) This section does not apply to a pardon issued for:

(A) Any offense in which the victim is a person under eighteen (18) years of age;

(B) A sex offense; or

(C) An offense resulting in death or serious physical injury.

(b) A person shall have his or her record of a conviction sealed by the court if the person:

(1) Committed a felony in this state while under sixteen (16) years of age;

(2) Was convicted and given a suspended sentence;

(3) Received a pardon for the conviction; and

(4) Has not been convicted of another criminal offense.

(c) This section does not prevent a person from requesting that his or her criminal record be sealed under § 16-90-1405 or § 16-90-1406.

History. Acts 2013, No. 1460, § 9.

16-90-1412. [Reserved.] [Effective January 1, 2014.]

16-90-1413. Procedure for sealing of records. [Effective January 1, 2014.]

(a)(1) A person who is eligible to have a record sealed under this subchapter may file a uniform petition in the circuit court or district court in the county where the offense was committed and in which the person was convicted for the offense he or she is now petitioning to have sealed.

(2) Except as provided for in § 16-90-1405, if a person has previously petitioned the court for the sealing of a record and that petition was subsequently denied, the person may not file a uniform petition under this subchapter regarding that record until one (1) year has passed since the denial of the previous petition.

(b)(1)(A) A copy of the uniform petition shall be served upon the prosecuting attorney for the county in which the uniform petition is filed and the arresting agency, if the arresting agency is a named party, within three (3) days of the filing of the uniform petition.

(B) It is not necessary to make the arresting agency a party to the action.

(2)(A) The prosecuting attorney may file a notice of opposition with the court for a petition seeking to seal a record of an eligible misdemeanor conviction or violation setting forth reasons for the opposition to the sealing within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B)(i) If notice of opposition is not filed, the court may grant the uniform petition.

(ii) If notice of opposition is filed, the court shall set the matter for a hearing if the record for which the uniform petition was filed is eligible for sealing under this subchapter unless the prosecuting attorney consents to allow the court to decide the case solely on the pleadings.

(3)(A) The prosecuting attorney may file a notice of opposition with the court for a petition seeking to seal a record of an eligible felony conviction setting forth reasons for the opposition to the sealing.

(B) A court may not sign a uniform order sealing an eligible felony conviction without a hearing.

(c)(1) The court may not grant the uniform petition until ninety (90) days have passed since the uniform petition was served on the prosecuting attorney, although the court may deny the uniform petition at any time.

(2) If the court determines that the record shall be sealed under the standards of § 16-90-1415, the uniform order described in § 16-90-1414 shall be entered and filed with the circuit clerk.

(d)(1) The circuit court clerk shall certify copies of the uniform order to the prosecuting attorney who filed the underlying charges, the arresting agency, the Arkansas Crime Information Center, and, if applicable, any district court where the person appeared before the transfer or appeal of the case to circuit court.

(2) The Administrative Office of the Courts shall only accept certified copies of the uniform orders filed in circuit court.

(e)(1) The circuit court clerk and, if applicable, the district court clerk where the person appeared before the transfer or appeal of the case to circuit court shall:

(A) Remove all petitions, orders, docket sheets, receipts, and documents relating to the record;

(B) Place the records described in subdivision (e)(1)(A) of this section in a file; and

(C) Sequester the records described in subdivision (e)(1)(A) of this section in a separate and confidential holding area within the clerk's office.

(2)(A) A docket sheet shall be prepared to replace the sealed docket sheet.

(B) The replacement docket sheet shall contain the docket number, a statement that the record has been sealed, and the date that the order to seal the record was issued.

(3) All indices to the file of the person with a sealed record shall be maintained in a manner to prevent general access to the identification of the person.

(f) The prosecuting attorney shall:

(1) Remove the entire case file and documents or other items related to the record;

(2) Place the records described in subdivision (e)(1)(A) of this section in a file; and

(3) Sequester the records described in subdivision (e)(1)(A) of this section in a confidential holding area within his or her office.

(g) The arresting agency shall:

(1) Remove its entire record file and documents or other items relating to the record, including any evidence still in the arresting agency's possession;

(2) Place the records described in subdivision (e)(1)(A) of this section in a file; and

(3) Sequester the records described in subdivision (e)(1)(A) of this section in a confidential holding area within the arresting agency.

(h) Upon notification of a uniform order, all circuit clerks, district clerks, arresting agencies, and other criminal justice agencies maintaining records in a computer-generated database shall either segregate the entire record, including receipts, into a separate file or ensure by other electronic means that the sealed record shall not be available for general access unless otherwise authorized by law.

History. Acts 2013, No. 1460, § 9.

16-90-1414. Uniform petition and uniform order to seal records. [Effective January 1, 2014.]

(a)(1) The Arkansas Crime Information Center shall adopt and provide the following to be used by a petitioner and any circuit court or district court in this state:

(A) A uniform petition to seal records; and

(B) A uniform order to seal records.

(2) An order to seal records covered by this subchapter shall not be effective unless the uniform order is entered.

(3)(A) The uniform petition shall include a statement verified under oath indicating whether the petitioner has felony charges pending in any state or federal court and the status of the pending felony charges as well as whether the person is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(B) The uniform petition also shall include a statement that the information contained in the petition is true and correct to the best of the petitioner's knowledge.

(4) The uniform order shall contain, at a minimum, the following data:

(A) The person's full name, race, gender, and date of birth;

(B) The person's full name at the time of arrest and adjudication of guilt, if applicable, if different from the person's current name;

(C) The offense for which the person was adjudicated guilty and the date of the disposition, if applicable;

(D) The identity of the court;

(E) The provision under this subchapter that provides for sealing of the record, if applicable;

(F) The specific records to be sealed;

(G) The arrest tracking number;

(H) The system identification (SID) number; and

(I) The Federal Bureau of Investigation number, if known.

(b)(1) If a record for the charges of the offense does not exist at the center, a record shall be established before the uniform order becomes effective.

(2) When a record does exist in the center, the petitioner and the original arresting agency shall submit fingerprint cards on the petitioner under § 12-12-1006 and procedures established by the center.

History. Acts 2013, No. 1460, § 9.

16-90-1415. Burden of proof — Standard of review. [Effective January 1, 2014.]

(a) For a uniform petition filed under § 16-90-1405, unless the circuit court or district court is presented with and finds that there is clear and convincing evidence that a misdemeanor or violation conviction should not be sealed under this subchapter, the circuit court or district court shall seal the misdemeanor or violation conviction for a person after the person files a petition as described in this section.

(b)(1) A uniform petition filed under § 16-90-1406 may be granted if the court finds by clear and convincing evidence that doing so would further the interests of justice, considering the following factors:

(A) Whether the person appears likely to reoffend;

(B) The person's other criminal history;

(C) The existence of any pending charges or criminal investigations involving the person;

(D) Input from the victim of the offense for which the person was convicted, if applicable; and

(E) Any other information provided by the state that would cause a reasonable person to consider the person a further threat to society.

(2) The factors listed in subdivision (b)(1) of this section are not exclusive.

(c) A uniform petition filed under § 16-90-1407 may be granted if the court finds that doing so is in the best interest of the petitioner and the state.

(d) A uniform petition filed under § 16-90-1409 or § 16-90-1410 shall be granted unless the state shows by a preponderance of the evidence that doing so would:

(1) Place the public at risk; or

(2) Not further the interests of justice.

(e) A uniform petition filed under § 16-90-1411 shall be granted if the court finds that the requirements of § 16-90-1411 are met.

(f)(1) An appeal of the grant or denial of the uniform petition to seal may be taken by either party.

(2) An appeal from the district court shall be taken to the circuit court, which shall review the case de novo.

(3) An appeal from the circuit court shall be taken as provided by Supreme Court rule, and the appellate court shall review the case using an abuse of discretion standard.

History. Acts 2013, No. 1460, § 9.

16-90-1416. Release of sealed records. [Effective January 1, 2014.]

(a) The custodian of a sealed record shall not disclose the existence of the sealed record or release the sealed record except when requested by:

(1) The person whose record was sealed or the person's attorney when authorized in writing by the person;

(2) A criminal justice agency, as defined in § 12-12-1001, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with the criminal justice agency by the person whose record has been sealed;

(3) A court, upon a showing of:

(A) A subsequent adjudication of guilt of the person whose record has been sealed; or

(B) Another good reason shown to be in the interests of justice;

(4) A prosecuting attorney, and the request is accompanied by a statement that the request is being made for a criminal justice purpose; or

(5) The Arkansas Crime Information Center.

(b)(1) As used in this section, "custodian" does not mean the Arkansas Crime Information Center.

(2) Access to data maintained by the center shall be governed by § 12-12-1001 et seq.

History. Acts 2013, No. 1460, § 9.

16-90-1417. Effect of sealing. [Effective January 1, 2014.]

(a)(1) A person whose record has been sealed under this subchapter shall have all privileges and rights restored, and the record that has been sealed shall not affect any of his or her civil rights or liberties unless otherwise specifically provided by law.

(2) A person who wants to reacquire the right to vote removed from him or her as the result of a felony conviction must follow the procedures in Arkansas Constitution, Amendment 51, § 11.

(3) The effect of this subchapter does not reconfer the right to carry a firearm if that right was removed as the result of a felony conviction.

(b)(1) Upon the entry of the uniform order, the person's underlying conduct shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist.

(2) This subchapter does not prevent the use of a prior conviction otherwise sealed under this subchapter for the following purposes:

(A) Any criminal proceeding for any purpose not otherwise prohibited by law;

(B) Determination of offender status under the former § 5-64-413;

(C) Habitual offender status, § 5-4-501 et seq.;

(D) Impeachment upon cross-examination as dictated by the Arkansas Rules of Evidence; or

(E) Any disclosure mandated by Rule 17, 18, or 19 of the Arkansas Rules of Criminal Procedure.

History. Acts 2013, No. 1460, § 9.

16-90-1418. Uniform petition and uniform order — Creation. [Effective January 1, 2014.]

The Arkansas Crime Information Center shall develop and draft the form to be used for the uniform petition and uniform order under this subchapter.

History. Acts 2013, No. 1460, § 9.

16-90-1419. Filing fee. [Effective January 1, 2014.]

(a) The circuit clerk or district court clerk shall collect a fee of fifty dollars ($50.00) for filing the uniform petition unless the petitioner is indigent and the fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure.

(b) The circuit clerk or district court clerk shall remit:

(1) One-half (½) of the fee by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the State Administration of Justice Fund; and

(2) The remaining one-half (½) of the fee as follows:

(A) If collected in circuit court, to the county treasurer to be deposited into the county general fund by the tenth day of each month;

(B) If collected in district court, to the treasury of each political subdivision that contributes to the expenses of the district court based on the percentage of the expenses contributed by the political subdivision by the tenth day of each month; or

(C) In a district court funded solely by the county, to the county treasurer of the county in which the district court is located to be deposited into the county general fund by the tenth day of each month.

History. Acts 2013, No. 1460, § 9.

CHAPTER 91

APPEAL AND POST-CONVICTION

SUBCHAPTER.
1. Appeal.

Subchapter 1 — Appeal

SECTION.
16-91-110. Bail bond.

16-91-101. Right generally.

CASE NOTES

Appealable Judgments.

Because the plain language of Ark. R. App. P. Crim. 1(a) and subsection (a) of this section required a conviction before a defendant had a right of appeal, and because a disposition pursuant to Act 346 of 1975, better known as the Arkansas First Offender Act, §§ 16-93-301 — 16-93-305, was not a conviction, defendant had no right to appeal. Lynn v. State, 2012 Ark. 6, — S.W.3d — (2012).

16-91-110. Bail bond.

(a) The bail bond provided for in this section shall be filed in the office of the clerk of the court in which the conviction is had, and a copy thereof shall be attached to the bill of exceptions and shall be made a part of the transcript to be filed in the Supreme Court.

(b)(1) Except those offenses provided for in subdivisions (b)(2) and (3) of this section, when a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense and is sentenced to serve a term of imprisonment, and the criminal defendant has filed an appeal, the court shall not release the defendant on bail or otherwise pending appeal unless the court finds:

(A) By clear and convincing evidence that the person is not likely to flee or that there is not a substantial risk that the defendant will

commit a serious crime, intimidate witnesses, harass or take retaliatory action against any juror, or otherwise interfere with the administration of justice or pose a danger to the safety of any other person; and

(B) That the appeal is not for the purpose of delay and that it raises a substantial question of law or fact.

(2) When a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense of capital murder, § 5-10-101, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(3) When a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to a criminal offense of murder in the first degree, § 5-10-102, rape, § 5-14-103, aggravated robbery, § 5-12-103, or causing a catastrophe, § 5-38-202(a), or the criminal offense of kidnapping, § 5-11-102, or arson, § 5-38-301, when classified as Class Y felonies, manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, and is sentenced to death or a term of imprisonment, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(c)(1) If the appeal is granted by the circuit court, the appeal bond shall be conditioned that the defendant surrender himself or herself in the Supreme Court upon the dismissal of the appeal or upon the rendition of final judgment upon the appeal.

(2)(A) If the defendant fails to surrender himself or herself in the Supreme Court in compliance with the conditions of his or her bond, the Supreme Court shall direct that fact to be entered on its records and shall adjudge the bail bond of the defendant, or the money deposited in lieu thereof, to be forfeited.

(B) The Clerk of the Supreme Court shall immediately make and forward to the clerk of the circuit court of the county in which the defendant was tried a certified copy of the judgment of the Supreme Court.

(3) The circuit clerk shall file the copy and shall immediately issue a summons against the sureties on the bail bond requiring them to appear and show cause why judgment should not be rendered against them for the sum specified in the bail bond on account of the forfeiture thereof, which summons shall be made returnable and shall be executed as in civil actions, and the action shall be docketed and shall proceed as an ordinary civil action.

(4) The summons may be served in any county in the state, and the service of the summons on the defendant or defendants in any county in the state shall give the court complete jurisdiction of the defendant and the cause.

(5) No pleadings on the part of the state shall be required in such cases.

(d)(1) If the court in which the case is tried refuses to grant an appeal and the appeal shall thereafter be granted by any Justice or Justices of the Supreme Court, the bond shall be conditioned that, upon the

dismissal of the appeal or the rendition of the final judgment therein by the Supreme Court, the defendant shall surrender himself or herself in execution of the judgment.

(2) If the appeal is not granted by the court in which the defendant was convicted, the bail bond shall also be conditioned that, if the appeal is not granted by any Justice or Justices of the Supreme Court, the defendant shall, immediately upon the denial of an appeal, surrender himself or herself to the sheriff of the county in which he or she was convicted in execution of the judgment and sentence of the trial court.

History. Acts 1899, No. 158, §§ 3, 4, p. 291; C. & M. Dig., §§ 2959, 2960, 3398-3402; Acts 1927, No. 6, § 1; Pope's Dig., §§ 3775, 3776, 4241 — 4245; A.S.A. 1947, §§ 43-2715 — 43-2719; Acts 1987, No. 31, § 1; 1994 (1st Ex. Sess.), No. 3, § 1; 1997, No. 1135, § 1; 2011, No. 570, § 83.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401" for "or manufacturing methamphetamine in violation of § 5-64-401" in (b)(3).

16-91-113. Matters to be considered — Preserving error — Action to be taken.

CASE NOTES

Relation to Federal Habeas Proceedings.

Fact that the Arkansas Supreme Court was required, pursuant to Ark. Sup. Ct. & Ct. App. R. 4-3(h) and subsection (a) of this section, to review the entire record of defendant's criminal case for prejudicial error, after she was convicted of capital murder, did not undermine the district court's finding that she was precluded for obtaining federal habeas relief under 28 U.S.C.S. § 2254 with regard to claims that she had not raised in the state courts because those claims were procedurally defaulted: (1) the state Supreme Court's review obligation under Ark. Sup. Ct. & Ct. App. R. 4-3(h) was limited to issues that defendant actually raised in the trial or appellate courts; (2) the state Supreme Court could not be deemed to have reviewed the procedurally defaulted claims under App. R. 4-3(h) because defendant had not raised any of them in the state trial court or in her appellate briefs; and (3) the district court's procedural default holding was consistent with current U.S. Supreme Court precedent, which required the defendant to "fairly present" her federal claims to the state courts first, which required that she actually raise the claims in the state courts. Meadows v. Norris, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 85428 (E.D. Ark. Nov. 9, 2007).

Cited: Lacy v. State, 2010 Ark. 388, — S.W.3d — (2010).

Subchapter 2 — Post-Conviction

16-91-204. Legislative intent.

CASE NOTES

Denial of Investigator

Circuit court did not abuse its discretion in denying the inmate authorization to retain an investigator to probe into issues of jury bias and misconduct because the inmate failed to demonstrate the need for

an investigator, as nothing required the inmate's counsel to rely exclusively on an investigator to investigate whether one of the jurors had failed to disclose information accurately during voir dire and the inmate admitted that he did not know if any misrepresentation occurred. Williams v. State, 369 Ark. 104, 251 S.W.3d 290 (2007).

Cited: Lee v. State, 367 Ark. 84, 238 S.W.3d 52 (2006).

CHAPTER 92

COSTS, FEES, FINES, ETC.

SECTION.

16-92-118. Fines — Collection and deposit.

(a)(1) Notwithstanding § 16-13-709, the quorum court of each county of this state may delegate the responsibility for the electronic collection of fines assessed in a circuit court of this state within that county to the Administrative Office of the Courts or the Information Network of Arkansas.

(2) Fines collected in each circuit court by the Administrative Office of the Courts or the Information Network of Arkansas shall be remitted by the fifth working day of the following month to the county official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in that circuit court to be disbursed to the appropriate county fund, state entity, or state agency as provided by law.

(b)(1) Notwithstanding § 16-13-709, the governing body or, if applicable and by mutual agreement, each governing body of a political subdivision that contributes to the expenses of a district court or the governing body of the city in which a city court is located may designate the responsibility for the electronic collection of fines assessed in that district court or that city court to the Administrative Office of the Courts or the Information Network of Arkansas.

(2) Fines collected in each district court or each department of district court by the Administrative Office of the Courts or the Information Network of Arkansas shall be remitted by the fifth working day of the following month to the county or city official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in that district court to be disbursed under § 16-17-707.

(c) Fines collected in each city court by the Administrative Office of the Courts or the Information Network of Arkansas shall be disbursed by the fifth working day of the following month to the city official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in that city court to be disbursed to the general fund or other city fund, state agency, or state entity as provided by law.

(d)(1) The Administrative Office of the Courts or the Information Network of Arkansas shall be allowed to charge a transaction fee for any electronic payment of a court-ordered fine by an approved credit card or debit card.

(2) The fee provided for in subsection (d)(1) of this section collected by the Administrative Office of the Courts shall be deposited by the fifth day of each month into the Judicial Fine Collection Enhancement Fund established by § 16-13-712.

(e)(1) This section does not prohibit the county or city official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in a circuit court, district court, or city court of this state from the electronic collection of fines. The quorum court of each county may establish a transaction fee to be charged by the county official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in a circuit court within that county for any electronic payment of a court-ordered fine by an approved credit card or debit card.

(2) The governing body or, if applicable and by mutual agreement, each governing body of a political subdivision that contributes to the expenses of a district court or the governing body of the city in which a city court is located, may establish a transaction fee to be charged by the city or county official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in that district court or city court for any electronic payment of a court-ordered fine by an approved credit card or debit card.

(3) The fee provided for in subdivisions (e)(1) and (2) of this section collected by the designated county or city official, agency, or department shall be deposited by the tenth day of each month in the appropriate circuit court automation fund, district court automation fund, or city court automation fund established under § 16-13-704 to be used solely for the purposes stated in that section.

(f)(1) The procedures established by this section apply to the assessment and collection of all monetary fines, however designated, imposed by circuit courts, district courts, or city courts for criminal convictions, traffic convictions, civil violations, and juvenile delinquency adjudications and shall be used to obtain prompt and full payment of all such fines.

(2) For purposes of this section, the term "fine" or "fines" means all monetary penalties imposed by the courts of this state, which include fines, court costs, restitution, probation fees, and public service work supervisory fees.

History. Acts 2009, No. 328, § 4; 2011, No. 1218, § 13.

A.C.R.C. Notes. Acts 2009, No. 328, §§ 1, 2, provided: "SECTION 1. Pursuant to Arkansas Code § 16-10-101 and 16-10-102, the Arkansas Supreme Court, through the Administrative Office of the Courts, is responsible for the design, purchase, implementation, and operation of a comprehensive automated court management system for use by all district, circuit, and appellate courts in the State of Arkansas.

"In 2001, the Arkansas Supreme Court

created the Arkansas Court Automation Project to carry out these responsibilities and appointed the Arkansas Supreme Court Committee on Automation to oversee the project. Since that time a comprehensive system has been bid and purchased, redesigned for maximum use in Arkansas courts, and implemented in a number of pilot courts in the state. The system is now completed and scheduled for distribution and use by all of the courts in the state.

"The purpose of this Act is to provide a structure for the perpetual staffing and operation of the system so that the system is self-supporting and all funding is generated by and through use of the system and without any use of the general revenue funds of the State of Arkansas."

"SECTION 2. This Act is to be known as the 'Court Technology Improvement Act of 2009.' "

Amendments. The 2011 amendment substituted "a transaction fee" for "an access fee not to exceed ten dollars ($10.00" in (d)(1), (e)(1), and (e)(2); redesignated (e)(3) and (e)(4) as (e)(2) and (e)(3); and substituted "subdivisions (e)(1) and (2)" for "subdivisions (e)(2) and (3)" in (e)(3).

CHAPTER 93

PROBATION AND PAROLE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2013, No. 282, § 17: Mar. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-93-101. Definitions.

As used in this act:

(1) "Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:

(A) Targets and prioritizes the specific criminal risk factors of the offender based upon his or her assessment results;

(B) Matches the type and intensity of supervision and treatment conditions to the offender's level of risk, criminal risk factors, and individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;

(C) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and

(D) Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors;

(2) "Criminal risk factors" are characteristics and behaviors that affect a person's risk for committing crimes and may include without limitation the following risk and criminogenic need factors:

(A) Antisocial personality;

(B) Criminal thinking;

(C) Criminal associates;

(D) Dysfunctional family;

(E) Low levels of employment or education; and

(F) Substance abuse;

(3) "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;

(4) "Intermediate sanctions" means a nonprison accountability measure imposed on an offender in response to a violation of supervision conditions. Such measures may include without limitation:

(A) The use of electronic supervision tools;

(B) Drug and alcohol testing or monitoring;

(C) Day or evening reporting;

(D) Restitution;

(E) Forfeiture of earned discharge credits;

(F) Rehabilitative interventions such as substance abuse and mental health treatment;

(G) Reporting requirements to probation or parole officers;

(H) Community service or community work project;

(I) Secure or unsecure residential treatment facilities; and

(J) Short-term, intermittent incarceration;

(5) "Jacket review" means the review of the file of a transfer-eligible inmate located at any correctional facility in the state by an individual

staff member or team of staff members of the Department of Community Correction for purposes of preparing the inmate's application for parole consideration by the Parole Board;

(6) "Parole" means the release of the prisoner into the community by the board prior to the expiration of his or her term, subject to conditions imposed by the board and to the supervision of the Department of Community Correction. When a court or other authority has filed a warrant against the prisoner, the board may release him or her on parole to answer the warrant of the court or authority;

(7) "Probation" means a procedure under which a defendant, found guilty upon verdict or plea, is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of the Department of Community Correction, but only if the supervision is requested in writing by the court;

(8) "Recidivism" means the return to incarceration in a Department of Correction or Department of Community Correction community correctional facility other than a technical violator program within a three-year period;

(9) "Risk needs assessment review" means an examination of the results of a validated risk-needs assessment;

(10)(A) "Treatment" means targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior.

(B) Treatment options may include without limitation:

(i) Community-based programs that are consistent with evidence-based practices;

(ii) Cognitive behavioral programs;

(iii) Inpatient and outpatient substance abuse and mental health programs; and

(iv) Other available prevention and intervention programs that have been scientifically proven to reliably reduce recidivism; and

(11) "Validated risk-needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 23; A.S.A. 1947, § 43-2801; Acts 2005, No. 1994, § 286; 2011, No. 570, § 84.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added (1) through (5); redesignated former (1) and (2) as (6) and (7); and added (8) through (11).

16-93-104. Supervision fee — Direct payment by offender — Failure to pay.

(a)(1) Any offender on probation, parole, or transfer under supervision of the Department of Community Correction shall pay to the department a monthly fee of thirty-five dollars ($35.00).

(2) The Director of the Department of Community Correction or his or her designee shall deposit:

(A) Twenty-five dollars ($25.00) of each payment received into the State Treasury as special revenues credited to the Community Correction Revolving Fund; and

(B)(i) Ten dollars ($10.00) of each payment received into the Best Practices Fund, § 19-5-1139, to ensure evidence-based programs and supervision practices are available to offenders supervised on either probation or parole.

(ii) The Board of Corrections shall promulgate regulations for the accounting and distribution of the Best Practices Fund to ensure that:

(a) No less than seventy-five percent (75%) of the funds are used by the Department of Community Correction for direct services to the offender population it supervises that have been proven, through research, to reduce recidivism among the offender population served;

(b) The direct services may be provided by the Department of Community Correction, the Department of Human Services, and community-based vendors meeting these criteria and serving offenders being supervised by the Department of Community Correction; and

(c) No more than ten percent (10%) of the funds are used to train staff managing the offender population in evidence-based practices.

(3) Expenditures from the Community Correction Revolving Fund shall be used for continuation and expansion of community punishment programs as established and approved by the Board of Corrections.

(b)(1) When an offender on probation defaults in the payment of supervision fees or any installment thereof, the court may require the offender to show cause why he or she would not be imprisoned for nonpayment.

(2) The offender shall not be imprisoned if the offender is financially unable to make the payments and states so to the court in writing, under oath, and the court so finds.

(3) Unless the offender shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court may order the defendant imprisoned until the payments are made.

(4) If the court determines that the default in payment is not attributable to the causes specified in subdivision (b)(3) of this section, the court may enter an order allowing the offender additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion thereof in whole or in part.

(c)(1) The offender on parole may be imprisoned for violation of parole if the offender is financially able to make the payments and if the payments are not made and the Parole Board so finds, subject to the limitations set out in this subsection.

(2) The offender shall not be imprisoned if the offender is financially unable to make the payments and states so under oath to the Parole Board in writing, and the Parole Board so finds.

(d) Court costs under § 16-10-305 shall be collected in full before any fees are collected under this section.

History. Acts 1981, No. 70, §§ 1, 2; 1983, No. 887, §§ 1, 2; A.S.A. 1947, §§ 43-2808.1, 43-2808.2; Acts 1997, No. 278, § 1; 2011, No. 570, § 85; 2013, No. 282, § 11.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment, in (a)(1), substituted "parole, or transfer" for "or parole," inserted "monthly," and substituted "of thirty-five dollars ($35.00)" for "as determined by the Board of Corrections"; subdivided (a)(2); substituted "Twenty-five dollars ($25.00) of each payment" for "the payments" in (a)(2)(A); inserted (a)(2)(B); and substituted "Community Correction Revolving Fund" for "fund" in (a)(3).

The 2013 amendment added (d).

Subchapter 2 — Parole Board

Effective Dates. Acts 2007, No. 697, § 7: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

16-93-201. Creation — Members — Qualifications and training.

(a)(1) There is created the Parole Board, to be composed of seven (7) members to be appointed from the state at large by the Governor and confirmed by the Senate.

(2) Seven (7) members shall be full-time officials of this state, one (1) of whom shall be designated by the Governor as the chair of the board.

(3) Each member shall serve a seven-year term, except that the terms shall be staggered by the Governor so that the term of one (1) member expires each year.

(4)(A) A member must have at least a bachelor's degree from an accredited college or university, and the member should have no less than five (5) years' professional experience in one (1) of the following fields:

(i) Parole supervision;

(ii) Probation supervision;

(iii) Corrections;

(iv) Criminal justice;

(v) Law;

(vi) Law enforcement;

(vii) Psychology;

(viii) Psychiatry;

(ix) Sociology;

(x) Social work; or

(xi) Other related field.

(B) If the member does not have at least a bachelor's degree from an accredited college or university, he or she must have no less than seven (7) years' experience in a field listed in subdivision (a)(4)(A) of this section.

(5)(A) A member appointed after July 1, 2011, whether or not he or she has served on the board previously, shall complete a comprehensive training course developed in compliance with guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(B) All members shall complete annual training developed in compliance with guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(C) Training components shall include an emphasis on the following subjects:

(i) Data-driven decision making;

(ii)*(a)* Evidence-based practice.

(b) As used in this section, "evidence-based practice" means practices proven through research to reduce recidivism;

(iii) Stakeholder collaboration; and

(iv) Recidivism reduction.

(b) If any vacancy occurs on the board prior to the expiration of a term, the Governor shall fill the vacancy for the remainder of the unexpired term, subject to confirmation by the Senate at its next regular session.

(c) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) Four (4) members of the board shall constitute a quorum.

History. Acts 1989, No. 937, §§ 2, 3, 5; 1993, No. 530, § 1; 1993, No. 547, § 1; 1995, No. 285, § 1; 1995, No. 381, § 1; 1997, No. 250, § 120; 1999, No. 979, § 1; 2005, No. 1033, § 1; 2007, No. 697, § 3; 2011, No. 570, § 86.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added "Qualifications and training" in the section heading; and inserted (a)(4) and (a)(5).

16-93-206. Parole revocation review — Jurisdiction.

(a) The Parole Board shall serve as the revocation review board for any person subject to either parole or transfer from prison.

(b) Revocation proceedings for either parole or transfer shall follow all legal requirements applicable to parole and shall be subject to any additional policies, rules, and regulations set by the board.

History. Acts 1993, No. 530, § 2; 1993, No. 547, § 2; 1994 (1st Ex. Sess.), No. 8, § 1; 1994 (1st Ex. Sess.), No. 9, § 1; 1999, No. 1035, § 1; 2003, No. 1390, § 9; 2007, No. 600, § 1; 2007, No. 866, § 1; 2011, No. 570, § 87.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Parole revocation review — Jurisdiction" for "Board procedures" in the section heading; deleted (a) through (f); redesignated (g)(1) as (a) and (g)(2) as (b); and deleted (h).

16-93-207. Applications for pardon, commutation of sentence, and remission of fines and forfeitures.

(a)(1)(A) At least thirty (30) days before granting an application for pardon, commutation of sentence, or remission of fine or forfeiture, the Governor shall file with the Secretary of State a notice of his or her intention to grant the application.

(B) The Governor shall also direct the Department of Correction to send notice of his or her intention to the judge, the prosecuting attorney, and the sheriff of the county in which the applicant was convicted and, if applicable, to the victim or the victim's next of kin.

(2) The filing of the notice shall not preclude the Governor from later denying the application, but any pardon, commutation of sentence, or remission of fine or forfeiture granted without filing the notice shall be null and void.

(b) If the Governor does not grant an application for pardon, commutation of sentence, or remission of fine or forfeiture within two hundred forty (240) days of the Governor's receipt of the recommendation of the Parole Board regarding the application, the application shall be deemed denied by the Governor, and any pardon, commutation of sentence, or remission of fine or forfeiture granted after the two-hundred-forty-day period shall be null and void.

(c)(1)(A) Except as provided in subdivision (c)(3) and subsection (d) of this section, if an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied in writing by the Governor,

the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of four (4) years from the date of filing the application that was denied.

(B) Any person who made an application for pardon, commutation of sentence, or remission of fine or forfeiture that was denied on or after July 1, 2004, shall be eligible to file a new application four (4) years after the date of filing the application that was denied.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(3)(A) The Parole Board may waive the waiting period for filing a new application for pardon, commutation of sentence, or remission of fine or forfeiture described in subdivision (c)(1)(A) of this section if:

(i) It has been at least twelve (12) months after the date of filing the application that was denied; and

(ii) The Parole Board determines that the person whose application was denied has established that:

(a) New material evidence relating to the person's guilt or punishment has been discovered;

(b) The person's physical or mental health has substantially deteriorated; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(B)(i) The Parole Board shall promulgate rules that shall establish policies and procedures for waiver of the waiting period.

(ii) The Parole Board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) Except as provided in subdivision (d)(3) of this section, if an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of:

(A) Six (6) years from the date of the denial; or

(B) Eight (8) years from the date of the denial if the applicant is serving a sentence of life without parole for capital murder, § 5-10-101.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(3)(A) The Parole Board or the Governor may waive the waiting period for filing a new application for pardon, commutation of sentence, or remission of fine or forfeiture described in subdivision (d)(1) of this section if:

(i) It has been at least twelve (12) months after the date of filing the application that was denied; and

(ii) The Parole Board determines that the person whose application was denied has established that:

(a) New material evidence relating to the person's guilt or punishment has been discovered;

(b) The person's physical or mental health has substantially deteriorated; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(B)(i) The Parole Board shall promulgate rules that shall establish policies and procedures for waiver of the waiting period.

(ii) The Parole Board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) If an application for pardon, commutation of sentence, or remission of fine is granted, the Governor shall:

(1) Include in his or her written order the reasons for granting the application; and

(2) File with the Senate and the House of Representatives a copy of the order that includes:

(A) The applicant's name;

(B) The offense of which the applicant was convicted;

(C) The sentence imposed upon the applicant;

(D) The date that the sentence was imposed; and

(E) The effective date of the pardon, commutation of sentence, or remission of fine.

(f)(1) This section shall not apply to reprieves.

(2) Reprieves may be granted as presently provided by law.

History. Acts 1993, No. 5, §§ 1-4; 1995, No. 1195, § 1; 1999, No. 498, § 2; 2005, No. 1975, §§ 4, 5; 2005, No. 2097, § 2; 2007, No. 183, § 1; 2011, No. 1169, § 1; 2013, No. 131, §§ 1, 2.

Amendments. The 2011 amendment inserted the (d)(1)(A) designation and (d)(1)(B).

The 2013 amendment substituted "Board of Corrections" for "Parole Board" in (c)(3)(B)(i), (c)(3)(B)(ii), (d)(3)(B)(i) and (d)(3)(B)(ii); and substituted "shall establish" for "will establish" in (c)(3)(B)(i) and (d)(3)(B)(i).

16-93-209. [Repealed.]

Publisher's Notes. This section, concerning concealed handguns, was repealed by Acts 2013, No. 320, § 3. The section was derived from Acts 1999, No. 1253, § 1.

16-93-210. Monthly performance report on parole applications and outcome.

(a)(1) Beginning October 1, 2011, the Parole Board shall submit a monthly report to the chairs of the House Committee on Judiciary and the Senate Committee on Judciary, the Legislative Council, the Board of Corrections, the Governor, and the Commission on Disparity in Sentencing showing the number of persons who make application for parole and those who are granted or denied parole during the previous month for each criminal offense classification.

(2) The report shall include a breakdown by race of all persons sentenced in each criminal offense classification.

(3) The report shall include the reason for each denial of parole, the results of the risk-needs assessment, and the course of action that accompanies each denial pursuant to § 16-93-615(a)(2)(B)(ii).

(b) The board shall cooperate with and upon request make presentations and provide various reports, to the extent the board's budget will allow, to the Legislative Council concerning board policy and criteria on discretionary offender programs and services.

History. Acts 2003, No. 1031, § 6; 2005, No. 1994, § 277; 2011, No. 570, § 88.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Monthly performance report" for "Annual report" in the section heading; in (a)(1), substituted "October 1, 2011" for "July 31, 2003, and on July 31 of each year thereafter," substituted "a monthly report" for "an annual report," inserted "the Chairpersons of the House and Senate Judiciary Committees," inserted "the Board of Corrections, the Governor," and substituted "previous month" for "fiscal year"; and added (a)(3).

16-93-211. Early release to transitional housing facilities.

(a)(1) As used in this section, "transitional housing" means a program that provides housing for one (1) or more offenders who have been either:

(A) Transferred or paroled from the Department of Correction by the Parole Board; or

(B) Placed on probation by a circuit court or district court.

(2) An offender's home or the residence of an offender's family member shall not be considered a transitional housing facility for purposes of this section.

(b)(1) To assist an offender who will be eligible for parole or transfer to successfully reintegrate into the community, the board is authorized to place the offender into approved transitional housing up to one (1) year prior to the offender's date of eligibility for parole or transfer.

(2) Subject to conditions of release and consistent with rules promulgated by the board, placement in a transitional housing facility must be preceded by:

(A) The provision of all applicable notices under § 16-93-615; and

(B) A hearing conducted by the board.

(c) The decision to place an offender in transitional housing and the establishment of conditions of release by the board must be based on a reasoned, rational plan developed in conjunction with an accepted risk-needs assessment tool such that each placement decision is based on;

(1) Established criteria; and

(2) A determination that there is a reasonable probability that an offender can be placed in a transitional housing facility without detriment to:

(A) The community; or

(B) The offender.

(d) Conditions of release imposed by the board must at a minimum include a curfew requiring an offender placed in transitional housing to present himself or herself at a scheduled time to be confined in the transitional housing facility.

(e) An offender placed in transitional housing by the board will be supervised by officers of the Department of Community Correction.

(f) An offender who without permission leaves the custody of the transitional housing facility in which he or she is placed may be subject to criminal prosecution for escape, §§ 5-54-110 — 5-54-112.

(g) Revocation of placement in transitional housing must follow the revocation proceedings established in § 16-93-705.

History. Acts 2005, No. 679, § 1; 2011, No. 570, § 89.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "§ 16-93-615" for "§ 16-93-206" in (b)(2)(A).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

Subchapter 3 — Probation and Suspended Imposition of Sentence

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A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-301. Definitions. [Effective until January 1, 2014.]

As used in this subchapter, "expungement" means the procedure and effect as defined in § 16-90-901(a).

History. Acts 1975, No. 346, § 1; A.S.A. 1947, § 43-1231; Acts 1995, No. 998, § 8; 2011, No. 570, § 90.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2011 amendment rewrote the section.

16-93-301. Definitions. [Effective January 1, 2014.]

As used in this subchapter, "sealing" means the procedure and effect as defined in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

History. Acts 1975, No. 346, § 1; A.S.A. 1947, § 43-1231; Acts 1995, No. 998, § 8; 2011, No. 570, § 90; 2013, No. 1460, § 10.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment substituted "sealing" for "expungement" and "the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq." for "§ 16-90-901(a)."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-302. Probation — First time offenders — Penalties.

(a)(1) A person may not avail himself or herself of the provisions of this section and §§ 16-93-301 and 16-93-303 on more than one (1) occasion.

(2) Any person seeking to avail himself or herself of the benefits of this section and §§ 16-93-301 and 16-93-303 who falsely testifies,

swears, or affirms to the court that he or she has not previously availed himself or herself of the benefits of this section and §§ 16-93-301 and 16-93-303 is guilty of a Class D felony.

(b)(1) Any person charged under this section and §§ 16-93-301 and 16-93-303 with keeping the confidential records of first offenders, as provided in § 16-93-301, who divulges any information contained in the records to any person or agency other than a law enforcement officer or judicial officer is guilty of a violation and upon conviction is subject to a fine of not more than five hundred dollars ($500).

(2) Each violation shall be considered a separate offense.

History. Acts 1975, No. 346, §§ 4, 5; A.S.A. 1947, §§ 43-1234, 43-1235; Acts 2005, No. 1994, § 432; 2011, No. 570, § 90.

Amendments. The 2011 amendment added "Probation — First time offenders" in the section heading; substituted "A person may not" for "No person may" in (a)(1); and deleted "the provisions of" following "Any person charged under" in (b)(1).

CASE NOTES

Eligibility.

Although defendant had previously reaped the benefits of New Mexico's first-offender statute, under the plain language of this section and § 16-93-303, defendant had never before availed himself of Arkansas' benefits, nor had he been previously convicted of a felony; thus, defendant's first-offender status should not have been voided. Montoya v. State, 2010 Ark. 419, — S.W.3d — (2010).

16-93-303. Probation — First time offenders — Procedure. [Effective until January 1, 2014.]

(a)(1)(A)(i) Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit court or district court, in the case of a defendant who previously has not been convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court.

(ii) A sentence of a fine not exceeding three thousand five hundred dollars ($3,500) or an assessment of court costs against a defendant does not negate the benefits provided by this section or cause the probation placed on the defendant under this section to constitute a conviction except under subsections (c)-(e) of this section.

(iii) A serious felony involving violence or a felony involving violence as provided in § 5-4-501 shall not be eligible for expungement of record under this subchapter.

(B) However, no person who is found guilty of or pleads guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim was under eighteen (18) years of age shall be eligible for expungement or sealing of the record under this subchapter.

(2) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(3) Nothing in this subsection shall require or compel any court of this state to establish first offender procedures as provided in this section and §§ 16-93-301 and 16-93-302, nor shall any defendant be availed the benefit of this section and §§ 16-93-301 and 16-93-302 as a matter of right.

(b) Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and expunge the record, if consistent with the procedures established in § 16-90-901 et seq.

(c) During the period of probation described in subdivision (a)(1)(A)(i) of this section, a defendant is considered as not having a felony conviction except for:

(1) Application of any law prohibiting possession of a firearm by certain persons;

(2) A determination of habitual offender status;

(3) A determination of criminal history;

(4) A determination of criminal history scores;

(5) Sentencing; and

(6) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(d) After successful completion of probation placed on the defendant under this section, a defendant is considered as not having a felony conviction except for:

(1) A determination of habitual offender status;

(2) A determination of criminal history;

(3) A determination of criminal history scores;

(4) Sentencing; and

(5) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(e) The eligibility to possess a firearm of a person whose record has been expunged and sealed under this subchapter and § 16-90-901 et seq. is governed by § 5-73-103.

History. Acts 1975, No. 346, §§ 2, 3; A.S.A. 1947, §§ 43-1232, 43-1233; Acts 1995, No. 998, § 9; 1999, No. 1407, § 1; 2003, No. 1185, § 219; 2003, No. 1753, § 2; 2007, No. 744, § 2; 2011, No. 570, § 90; 2011, No. 1233, § 1.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2011 amendment by No. 570 inserted "court" following "judge of the circuit" in (a)(1)(A)(i); and inserted "or sealing" in (a)(1)(B).

The 2011 amendment by No. 1233 inserted (a)(1)(A)(iii).

CASE NOTES

Analysis

Applicability.
Disposition Not a Conviction.
Expungement.

Applicability.

Supreme Court reversed defendant's sentence and remanded for new sentencing because she had entered a plea of not guilty and was adjudicated guilty by the court following a bench trial, and therefore she was ineligible for sentencing pursuant to Act 346. State v. Webb, 373 Ark. 65, 281 S.W.3d 273 (2008).

Although defendant had previously reaped the benefits of New Mexico's first-offender statute, under the plain language of § 16-93-302 and this section, defendant had never before availed himself of Arkansas' benefits, nor had he been previously convicted of a felony; thus, defendant's first-offender status should not have been voided. Montoya v. State, 2010 Ark. 419, — S.W.3d — (2010).

Disposition Not a Conviction.

Because the plain language of Ark. R. App. P. Crim. 1(a) and § 16-91-101(a) required a conviction before a defendant had a right of appeal, and because a disposition pursuant to Act 346 of 1975, better known as the Arkansas First Offender Act, §§ 16-93-301 — 16-93-305, was not a conviction, defendant had no right to appeal. Lynn v. State, 2012 Ark. 6, — S.W.3d — (2012).

Expungement.

Appellate court affirmed the denial of an inmate's motion to vacate because, in reviewing the lengthy colloquy between the court it, was evident that expungement was not part of the individual's plea agreement; moreover, there was no right to expungement under this section. Barnett v. State, 366 Ark. 427, 236 S.W.3d 491 (2006).

Trial court erred in denying defendant's petition to have defendant's criminal record expunged because at the time defendant committed the sexual offenses, this section did not prohibit expungement for sexual offenses where the victim was under 18. Act 1407 of 1999, which precluded expungement in those circumstances, was not effective until July 30, 1999, and the act did not indicate that it was to be retroactively applied. McBride v. State, 99 Ark. App. 201, 258 S.W.3d 782 (2007).

16-93-303. Probation — First time offenders — Procedure. [Effective January 1, 2014.]

(a)(1)(A)(i) Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit court or district court, in the case of a defendant who previously has not been convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court.

(ii) A sentence of a fine not exceeding three thousand five hundred dollars ($3,500) or an assessment of court costs against a defendant does not negate the benefits provided by this section or cause the probation placed on the defendant under this section to constitute a conviction except under subsections (c)-(e) of this section.

(iii) A serious felony involving violence or a felony involving violence as provided in § 5-4-501 shall not be eligible for sealing of record under this subchapter.

(B) However, a person who is found guilty of or pleads guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et seq.

and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 is not eligible for sealing of the record under this subchapter.

(2) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(3) This subsection does not require or compel any court of this state to establish first offender procedures as provided in this section and §§ 16-93-301 and 16-93-302.

(b) Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and seal the record, if consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) During the period of probation described in subdivision (a)(1)(A)(i) of this section, a defendant is considered as not having a felony conviction except for:

(1) Application of any law prohibiting possession of a firearm by certain persons;

(2) A determination of habitual offender status;

(3) A determination of criminal history;

(4) A determination of criminal history scores;

(5) Sentencing; and

(6) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(d) After successful completion of probation placed on the defendant under this section, a defendant is considered as not having a felony conviction except for:

(1) A determination of habitual offender status;

(2) A determination of criminal history;

(3) A determination of criminal history scores;

(4) Sentencing; and

(5) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(e) The eligibility to possess a firearm of a person whose record has been sealed under this subchapter and the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., is governed by § 5-73-103.

History. Acts 1975, No. 346, §§ 2, 3; A.S.A. 1947, §§ 43-1232, 43-1233; Acts 1995, No. 998, § 9; 1999, No. 1407, § 1; 2003, No. 1185, § 219; 2003, No. 1753, § 2; 2007, No. 744, § 2; 2011, No. 570, § 90; 2011, No. 1233, § 1; 2013, No. 1460, § 11.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment substituted "sealing" for "expungement" in (a)(1)(A)(iii); substituted "is not eligible for sealing" for "in which the victim was under eighteen (18) years of age shall be eligible for expungement or" in (a)(1)(B); rewrote (a)(3); in (b), substituted "seal" for "expunge," and "the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401" for "§ 16-90-901"; in (e), deleted "expunged and" following "been" and substituted "the Comprehensive

Criminal Record Sealing Act of 2013, § 16-90-1401" for "§ 16-90-901."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-304. Probation — First-time offenders — Arkansas Crime Information Center. [Effective until January 1, 2014.]

(a) All district court judges and circuit court judges shall immediately report to the Arkansas Crime Information Center, in the form prescribed by the center, all probations of criminal defendants under §§ 16-93-301 — 16-93-303.

(b) Prior to granting probation to a criminal defendant under §§ 16-93-301 — 16-93-303, the court shall query the center to determine whether the criminal defendant has previously been granted probation under the provisions of §§ 16-93-301 — 16-93-303.

(c) If the center determines that an individual has utilized §§ 16-93-301 — 16-93-303 more than one (1) time, the center shall notify the last sentencing judge of that fact.

History. Acts 1981, No. 581, § 1; A.S.A. 1947, § 43-1236; Acts 2005, No. 1994, § 278; 2011, No. 570, § 90.

Publisher's Notes. For text of this section effective January 1, 2014, see the following version.

Amendments. The 2011 amendment added "Probation — First-time offenders" to the section heading; and inserted "(1)" in (c).

16-93-304. Probation — First-time offenders — Arkansas Crime Information Center. [Effective January 1, 2014.]

(a) All district court judges and circuit court judges shall immediately report to the Arkansas Crime Information Center, in the form prescribed by the center, all probations of criminal defendants under §§ 16-93-301 — 16-93-303.

(b) Prior to granting probation to a criminal defendant under §§ 16-93-301 — 16-93-303, the court shall query the center to determine whether the criminal defendant has previously been granted probation under the provisions of §§ 16-93-301 — 16-93-303.

(c) If the center determines that an individual has utilized §§ 16-93-301 — 16-93-303 more than one (1) time, the center shall notify the last sentencing judge of that fact.

(d) During the probationary period under this subchapter, the center shall report the case as pending and shall not record it as guilty until the circuit court or district court enters an adjudication of guilt.

History. Acts 1981, No. 581, § 1; A.S.A. 1947, § 43-1236; Acts 2005, No. 1994, § 278; 2011, No. 570, § 90; 2013, No. 1460, § 12.

Publisher's Notes. For text of this section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment added (d).

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-305. Probation — First time offenders — Sex offender may not reside with minor victim.

(a) Whenever an accused who enters a plea of guilty or nolo contendere prior to an adjudication of guilt for any sexual offense defined in § 5-14-101 et seq. or incest as defined in § 5-26-202 for a sexual offense or incest perpetrated against a minor is eligible for probation under procedures defined in § 16-93-303 or any other provision of law, as a condition of granting probation the court shall prohibit the accused, upon release, from residing in a residence with any minor unless the court makes a specific finding that the accused poses no danger to the minors residing in the residence.

(b) Upon violation of this condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

History. Acts 1997, No. 1188, § 1; 2011, No. 570, § 90.

Amendments. The 2011 amendment added "Probation — First time offenders —" to the section heading.

16-93-306. Probation generally — Supervision.

(a)(1) The Director of the Department of Community Correction with the advice of the Board of Corrections shall establish written policies and procedures governing the supervision of probationers designed to enhance public safety and to assist the probationers in integrating into society.

(2)(A) The supervision of probationers shall be based on evidence-based practices including a validated risk-needs assessment.

(B) Decisions shall target the probationer's criminal risk factors with appropriate supervision and treatment.

(b) A probation officer shall:

(1) Investigate all cases referred to him or her by the director, the sentencing judge, or the prosecuting attorney;

(2) Furnish to each probationer under his or her supervision a written statement of the conditions of probation and instruct the probationer that he or she must stay in compliance with the conditions of probation or risk revocation under § 16-93-308;

(3) Develop a case plan for each individual who is assessed as a moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the probationer's conduct and condition through visitation, required reporting, or other methods, and report to the sentencing court of that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a probationer to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the probationer including, without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment;

(7) The results of the risk-needs assessment shall assist in making decisions that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(8) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The department shall allocate resources, including the assignment of probation officers, to focus on moderate-risk and high-risk offenders as determined by the actuarial assessment provided in subdivision (b)(5) of this section.

(2) The department shall require public and private treatment and service providers that receive state funds for the treatment of or service for probationers to use evidence-based programs and practices.

(d)(1) The department shall have the authority to sanction probationers administratively without utilizing the revocation process under § 16-93-307.

(2)(A) The department shall develop an intermediate sanctions procedure and grid to guide a probation officer in determining the appropriate response to a violation of conditions of supervision.

(B) Intermediate sanctions administered by the department are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening and or treatment;

(D) Increased monitoring, including electronic monitoring and home confinement;

(E)(i) Incarceration in a county jail for no more than seven (7) days.

(ii) Incarceration as an intermediate sanction shall not be used more than ten (10) times with an individual probationer, and no probationer shall accumulate more than thirty (30) days' incarceration as an intermediate sanction before the probation officer recommends a violation of the person's probation under § 16-93-307.

History. Acts 2011, No. 570, § 90.

16-93-307. Probation generally — Revocation hearings.

(a)(1) A defendant arrested for violation of suspension or probation is entitled to a preliminary hearing to determine whether there is reasonable cause to believe that he or she has violated a condition of suspension or probation.

(2) The preliminary hearing shall be conducted by a court having original jurisdiction to try a criminal matter as soon as practicable after arrest and reasonably near the place of the alleged violation or arrest.

(3) The defendant shall be given prior notice of the:

(A) Time and place of the preliminary hearing;

(B) Purpose of the preliminary hearing; and

(C) Condition of suspension or probation the defendant is alleged to have violated.

(4) Except as provided in subsection (c) of this section, the defendant has the right to hear and controvert evidence against him or her and to offer evidence in his or her own behalf.

(5)(A) If the court conducting the preliminary hearing finds that there is reasonable cause to believe that the defendant has violated a condition of suspension or probation, it may order the defendant to be detained or it may return the defendant to supervision and may consider imposing one or more intermediate sanctions in the sanctioning grid pending further revocation proceedings before the court that originally suspended imposition of sentence on the defendant or placed him or her on probation.

(B)(i) If the court conducting the preliminary hearing does not find reasonable cause, it shall order the defendant released from custody.

(ii) However, a release under subdivision (a)(5)(B)(i) of this section does not bar the court that suspended imposition of sentence on the defendant or placed him or her on probation from holding a hearing on the alleged violation of suspension or probation or from ordering that the defendant appear before it.

(6) The court conducting the preliminary hearing shall prepare and furnish to the court that suspended imposition of sentence on the defendant or placed him or her on probation a summary of the preliminary hearing, including the responses of the defendant and the substance of the documents and evidence given in support of revocation.

(b)(1) A suspension or probation shall not be revoked except after a revocation hearing.

(2) The revocation hearing shall be conducted by the court that suspended imposition of sentence on the defendant or placed him or her on probation within a reasonable period of time after the defendant's arrest, not to exceed sixty (60) days.

(3) The defendant shall be given prior written notice of the:

(A) Time and place of the revocation hearing;

(B) Purpose of the revocation hearing; and

(C) Condition of suspension or probation the defendant is alleged to have violated.

(4) Except as provided in subsection (c) of this section, the defendant has the right to:

(A) Hear and controvert evidence against him or her;

(B) Offer evidence in his or her own defense; and

(C) Be represented by counsel.

(5) If suspension or probation is revoked, the court shall prepare and furnish to the defendant a written statement of the evidence relied on and the reasons for revoking suspension or probation.

(c) At a preliminary hearing pursuant to subsection (a) of this section or a revocation hearing pursuant to subsection (b) of this section:

(1) The defendant has the right to counsel and to confront and cross-examine an adverse witness unless the court specifically finds good cause for not allowing confrontation; and

(2) The court may permit the introduction of any relevant evidence of the alleged violation, including a letter, affidavit, and other documentary evidence, regardless of its admissibility under the rules governing the admission of evidence in a criminal trial.

(d) A preliminary hearing pursuant to subsection (a) of this section is not required if:

(1) The defendant waives the preliminary hearing;

(2) The revocation is based on the defendant's commission of an offense for which he or she has been tried and found guilty in an independent criminal proceeding; or

(3) The revocation hearing pursuant to subsection (b) of this section is held promptly after the arrest and in the judicial district where the alleged violation occurred or where the defendant was arrested.

History. Acts 2011, No. 570, § 90.

CASE NOTES

Analysis

Right to Confrontation
Sufficiency of the Evidence.
Waiver.

Right to Confrontation

Any right to confrontation error in allowing fingerprint evidence in a suspended sentence revocation hearing without presenting the witness who took the fingerprints was harmless because there was live testimony from a homeowner who caught defendant in the act of a burglary and who identified him as the burglar. Reynolds v. State, 2012 Ark. App. 705, — S.W.3d —, 2012 Ark. App. LEXIS 822 (Dec. 12, 2012).

Sufficiency of the Evidence.

Because defendant failed to timely object to the admission of certain testimony, and because the circuit court was charged with resolving all questions of conflicting testimony and inconsistent evidence, pursuant to former §§ 5-4-309(d) and 5-4-310(c)(2), a preponderance of the evidence supported the revocation of defendant's probation. Ellis v. State, 2011 Ark. App. 654, — S.W.3d — (2011).

Where the State filed a petition to revoke defendant's probation for residential burglary alleging he violated the conditions of his probation by failing to pay fines, costs, and fees, failing to report to his probation officer, and providing of a false address to his probation officer, the trial court conducted his hearing pursuant to subsection (b) of this section; a county employee testified that he did not pay his fines, costs, and fees, and defendant's probation officer testified that he failed to report and did not live at the address he provided. The evidence was sufficient to support the trial court's decision revoking probation. Foster v. State, 2013 Ark. App. 2, — S.W.3d —, 2013 Ark. App. LEXIS 9 (Jan. 16, 2013).

Waiver.

On appeal of the decision revoking defendant's suspended sentence for burglary, his argument that the trial court erred by failing to provide a reason for the revocation as required by subdivision (b)(5) of thsi section was not preserved for

review because he failed to object. Love v. State, 2012 Ark. App. 600, — S.W.3d —, 2012 Ark. App. LEXIS 705 (Oct. 24, 2012).

Cited: Richards v. State, 2013 Ark. App. 15, — S.W.3d —, 2013 Ark. App. LEXIS 21 (Jan. 16, 2013).

16-93-308. Probation generally — Revocation.

(a)(1) At any time before the expiration of a period of suspension or probation, a court may summon a defendant to appear before it or may issue a warrant for the defendant's arrest.

(2) The warrant may be executed by any law enforcement officer.

(b) At any time before the expiration of a period of suspension or probation, any law enforcement officer may arrest a defendant without a warrant if the law enforcement officer has reasonable cause to believe that the defendant has failed to comply with a condition of his or her suspension or probation.

(c) A defendant arrested for violation of suspension or probation shall be taken immediately before the court that suspended imposition of sentence or, if the defendant was placed on probation, before the court supervising the probation.

(d) If a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his or her suspension or probation, the court may revoke the suspension or probation at any time prior to the expiration of the period of suspension or probation.

(e) A finding of failure to comply with a condition of suspension or probation as provided in subsection (d) of this section may be punished as contempt under § 16-10-108.

(f) A court may revoke a suspension or probation subsequent to the expiration of the period of suspension or probation if before expiration of the period:

(1) The defendant is arrested for violation of suspension or probation;

(2) A warrant is issued for the defendant's arrest for violation of suspension or probation;

(3) A petition to revoke the defendant's suspension or probation has been filed if a warrant is issued for the defendant's arrest within thirty (30) days of the date of filing the petition; or

(4) The defendant has been:

(A) Issued a citation in lieu of arrest under Rule 5 of the Arkansas Rules of Criminal Procedure for violation of suspension or probation; or

(B) Served a summons under Rule 6 of the Arkansas Rules of Criminal Procedure for violation of suspension or probation.

(g)(1)(A) If a court revokes a suspension or probation, the court may enter a judgment of conviction and may impose any sentence on the defendant that might have been imposed originally for the offense of which he or she was found guilty.

(B) However, any sentence to pay a fine or of imprisonment, when combined with any previous fine or imprisonment imposed for the

same offense, shall not exceed the limits of § 5-4-201 or § 5-4-401, or if applicable, § 5-4-501.

(2)(A) As used in this subsection, "any sentence" includes the extension of a period of suspension or probation.

(B) If an extension of suspension or probation is made upon revocation, the court is not deprived of the ability to revoke the suspension or probation again should the defendant's conduct again warrant revocation.

(h)(1) A court shall not revoke a suspension of sentence or probation because of a person's inability to achieve a high school diploma, general education development certificate, or gainful employment.

(2)(A) However, the court may revoke a suspension of sentence or probation if the person fails to make a good faith effort to achieve a high school diploma, general education development certificate, or gainful employment.

(B) As used in this section a "good faith effort" means a person:

(i) Has been enrolled in a program of instruction leading to a high school diploma or a general education development certificate and is attending a school or an adult education course; or

(ii) Is registered for employment and enrolled and participating in an employment-training program with the purpose of obtaining gainful employment.

History. Acts 2011, No. 570, § 90.

CASE NOTES

Analysis

Revocation Proper.
Sentence After Revocation.
Sexual-Offender Registration.
Sufficiency of the Evidence.

Revocation Proper.

Probation was properly revoked under subsection (d) of this section because, even setting aside alleged fine delinquencies and a misdemeanor conviction, appellant violated the conditions of his probation that prohibited him from possessing or using alcohol or illegal drugs. Pfeifer v. State, 2012 Ark. App. 556, — S.W.3d — (2012).

Sentence After Revocation.

Argument that appellant's due process rights under Ark. Const. Art. 2, § 8 were violated when a trial court failed to consider all of the sentencing options available after a revocation of probation was not preserved for appellate review because the argument was not raised when appellant was sentenced. Mewborn v. State, 2012 Ark. App. 195, — S.W.3d — (2012).

In a case where probation was revoked, a 20-year sentence for Class B felony kidnapping was not improper since it was authorized under § 5-4-401(a)(3); the appellate court was unable to reduce a sentence within the range of punishment contemplated by the Arkansas Legislature. Moreover, since appellant failed to object to the sentence imposed, he was unable to argue on appeal that the trial court erred by failing to consider alternatives to the 20-year sentence. Pfeifer v. State, 2012 Ark. App. 556, — S.W.3d — (2012).

Sexual-Offender Registration.

Trial court did not clearly err in finding that defendant made no effort to comply with sexual-offender registration requirements. Therefore, the trial court properly revoked defendant's suspended sentence. Muldrew v. State, 2012 Ark. App. 568, — S.W.3d — (2012).

Sufficiency of the Evidence.

Because defendant failed to timely object to the admission of certain testimony, and because the circuit court was charged with resolving all questions of conflicting testimony and inconsistent evidence, pursuant to §§ 5-4-309(d) and 5-4-310(c)(2), a preponderance of the evidence supported the revocation of defendant's probation. Ellis v. State, 2011 Ark. App. 654, — S.W.3d — (2011).

Because the trial court's finding that appellant failed to report to his probation officer was not clearly against the preponderance of the evidence as the probation officer testified that if appellant had in fact reported on August 10 it would be reflected in his records, revocation of his probation was proper under subsection (d) of this section. Major v. State, 2012 Ark. App. 501, — S.W.3d — (2012).

Trial court revoked defendant's suspended sentence for burglary based on allegations that he failed to paying his court-ordered fees, did not notify the sheriff of his current address, and committed new criminal offenses; at the revocation hearing, a county employee testified that defendant did not make any payments toward his $700 bill for costs and the court also heard testimony indicating that defendant shot a man seven times. Defendant did not challenge the sufficiency of the evidence supporting the revocation of his suspended sentence under subsection (d) of this section. Love v. State, 2012 Ark. App. 600, — S.W.3d —, 2012 Ark. App. LEXIS 705 (Oct. 24, 2012).

Sufficient evidence supported the trial court's decision to revoke defendant's probation for residential burglary because he and a county employee testified that he did not pay his fines, costs, and fees as directed. Although defendant testified that he did not have a job or any income, the trial court did not err in revoking his probation because he did not provide a reasonable excuse under subsection (d) of this section for his failure to comply with his probation conditions. Foster v. State, 2013 Ark. App. 2, — S.W.3d —, 2013 Ark. App. LEXIS 9 (Jan. 16, 2013).

Revocation of defendant's probation was proper under this section because defendant admitted to drinking alcohol and failing to report to his probation officer. Any argument that the trial court's findings were against the preponderance of the evidence would clearly be without merit; because of that, counsel's motion to be relieved as counsel under Ark. Sup. Ct. & Ct. App. R. 4-3 was properly granted. Martin v. State, 2013 Ark. App. 7, — S.W.3d —, 2013 Ark. App. LEXIS 11 (Jan. 16, 2013).

Trial court did not err under subsection (d) of this section in revoking defendant's probation for possession of a controlled substance; defendant admittedly failed to abide by the terms of probation, particularly with respect to an obligation to report to the probation officer in person. Lanfair v. State, 2013 Ark. App. 51, — S.W.3d — (2013).

Trial court did not err under subsection (d) of this section in revoking defendant's probation for possession of a controlled substance; defendant admittedly failed to abide by the terms of probation, particularly with respect to an obligation to report to the probation officer in person. Lanfair v. State, 2013 Ark. App. 51, — S.W.3d — (2013).

Evidence was sufficient to revoke defendant's probation because she admitted to using methamphetamine, admitted to failing to pay her court fines and costs, and there was testimony by the police officer that he found narcotics and two pipes at her residence; the court found defendant possessed and used controlled substances. McLane v. State, 2013 Ark. App. 258, — S.W.3d — (2013).

16-93-309. Probation generally — Revocation hearing — Sentence alternatives.

(a) Following a revocation hearing held under § 16-93-307 and in which a defendant has been found guilty or has entered a plea of guilty or nolo contendere, the court may:

(1) Continue the period of suspension of imposition of sentence or continue the period of probation;

(2) Lengthen the period of suspension or the period of probation within the limits set by § 5-4-306;

(3) Increase the fine within the limits set by § 5-4-201;

(4) Impose a period of confinement to be served during the period of suspension of imposition of sentence or period of probation; or

(5) Impose any conditions that could have been imposed upon conviction of the original offense.

(b) Following a revocation hearing in which a defendant is ordered to continue on a period of suspension or a period of probation, nothing prohibits the court, upon finding the defendant guilty at a subsequent revocation hearing, from:

(1) Revoking the suspension or period of probation; and

(2) Sentencing the defendant to incarceration in the Department of Correction.

(c) If the suspension or probation of a defendant is subsequently revoked and the defendant is sentenced to a term of imprisonment, any period of time actually spent in confinement due to the original revocation shall be credited against the subsequent sentence.

History. Acts 2011, No. 570, § 90.

CASE NOTES

Sentence After Revocation.

Argument that appellant's due process rights under Ark. Const. Art. 2, § 8 were violated when a trial court failed to consider all of the sentencing options available after a revocation of probation was not preserved for appellate review because the argument was not raised when appellant was sentenced. Mewborn v. State, 2012 Ark. App. 195, — S.W.3d — (2012).

16-93-310. Probation generally — Revocation — Community correction program.

(a) When a person sentenced under a community correction program, § 5-4-312, violates any terms or conditions of his or her sentence or term of probation, revocation of the sentence or term of probation shall be consistent with the procedures under this subchapter.

(b) Upon revocation, the court of jurisdiction shall determine whether the offender shall remain under the jurisdiction of the court and be assigned to a more restrictive community correction program, facility, or institution for a period of time or committed to the Department of Community Correction.

(c)(1) If committed to the Department of Correction, the court shall specify if the commitment is for judicial transfer of the offender to the Department of Community Correction or is a regular commitment; and

(2)(A) The court shall commit the eligible offender to the custody of the Department of Correction under this subchapter for judicial transfer to the Department of Community Correction subject to the following:

(i) That the sentence imposed provides that the offender shall serve no more than two (2) years of confinement, with credit for meritorious good time, with initial placement in a Department of Community Correction facility; and

(ii) That the initial placement in the Department of Community Correction is conditioned upon the offender's continuing eligibility for Department of Community Correction placement and the offender's compliance with all applicable rules and regulations established by the Board of Corrections for community correction programs.

(B) Post-prison supervision shall accompany and follow programming when appropriate.

History. Acts 2011, No. 570, § 90.

16-93-311. Probation generally — Restitution.

If the court has suspended imposition of sentence or placed a defendant on probation conditioned upon the defendant's making restitution and the defendant has not satisfactorily made all of his or her payments when the probation period has ended, the court may:

(1) Continue to assert the court's jurisdiction over the recalcitrant defendant; and

(2) Either:

(A) Extend the probation period as the court deems necessary; or

(B) Revoke the defendant's suspended sentence.

History. Acts 2011, No. 570, § 90.

CASE NOTES

Jurisdiction.

Court retained jurisdiction to revoke the suspended sentence for failure to pay restitution, because the petitioner was charged with fleeing to avoid arrest for possession of marijuana and causing property damage while fleeing, and was ordered to pay restitution for the damage he caused during the course of the criminal episode. Arter v. State, 2012 Ark. App. 327, — S.W.3d — (2012).

16-93-312. Probation generally — Modification.

(a) During a period of suspension or probation, upon the petition of a probation officer or a defendant or upon the court's own motion, a court may:

(1) Modify a condition imposed on the defendant;

(2) Impose an additional condition authorized by § 5-4-303;

(3) Impose an additional fine authorized by §§ 5-4-201 and 5-4-303; or

(4) Impose a period of confinement authorized by § 5-4-304.

(b) Nothing in this section shall limit the Department of Community Correction from authorizing sanctions within the intermediate sanctions grid when warranted by the defendant's conduct.

History. Acts 2011, No. 570, § 90.

16-93-313. Probation generally — Transfer of jurisdiction.

(a) If a defendant during a period of probation goes from a county where he or she is being supervised to another county, jurisdiction over the defendant may be transferred in the discretion of the supervising court to a court of comparable jurisdiction in the other county if the court in the other county concurs.

(b) If jurisdiction over a defendant is transferred under subsection (a) of this section, the court in the county to which jurisdiction is transferred has any power with respect to the defendant previously possessed by the transferring court.

(c) The procedure under this section may be repeated if a defendant goes from the county where he or she is being supervised to another county during the period of his or her probation.

History. Acts 2011, No. 570, § 90.

16-93-314. Probation generally — Discharge. [Effective until January 1, 2014.]

(a)(1) The court may discharge the defendant from probation at any time; or

(2) If a judgment of conviction was not entered by the court at the time of suspension or probation and the defendant fully complies with the conditions of suspension or probation for the period of suspension or probation, the court shall discharge the defendant and dismiss any proceedings against him or her.

(b)(1) Subject to the provisions of §§ 5-4-501 — 5-4-504, a person against whom proceedings are discharged or dismissed under subsection (a) of this section may seek to have the criminal record sealed, consistent with the procedures established in § 16-90-901 et seq.

(2) This subsection does not apply if:

(A) The person applying for discharge has been convicted of a sexual offense as defined by § 5-14-101 et seq.; and

(B) The victim was under eighteen (18) years of age.

History. Acts 2011, No. 570, § 90.
Publisher's Notes. For text of section effective January 1, 2014, see the following version.

16-93-314. Probation generally — Discharge. [Effective January 1, 2014.]

(a)(1) The court may discharge the defendant from probation at any time; or

(2) If a judgment of conviction was not entered by the court at the time of suspension or probation and the defendant fully complies with the conditions of suspension or probation for the period of suspension or probation, the court shall discharge the defendant and dismiss any proceedings against him or her.

(b)(1) Subject to the provisions of §§ 5-4-501 — 5-4-504, a person against whom proceedings are discharged or dismissed under subsection (a) of this section may seek to have the criminal record sealed, consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(2) This subsection does not apply if:

(A) The person applying for discharge has been convicted of a sexual offense as defined by § 5-14-101 et seq.; and

(B) The victim was under eighteen (18) years of age.

History. Acts 2011, No. 570, § 90; 2013, No. 1460, § 13.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment substituted "the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401" for "§ 16-90-901" in (b)(1).

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

Subchapter 4 — Probation — Suspension of Sentence

SECTION.
16-93-402. [Repealed.]

16-93-402. [Repealed.]

Publisher's Notes. This section, concerning probation officers, was repealed by Acts 2011, No. 570, § 91. The section was derived from Acts 1973, No. 818, § 2; 1975, No. 602, § 1; 1979, No. 326, § 1; A.S.A. 1947, § 43-2332; Acts 1993, No. 549, § 9.

CASE NOTES

Analysis

Applicability.
Revocation of Probation.

Applicability.

This section only applies when a sentence is imposed, in which case, upon revocation, the defendant can only be made to serve the sentence imposed or any lesser sentence which might have originally been imposed. Cox v. State, 365 Ark. 358, 229 S.W.3d 883 (2006).

Revocation of Probation.

After revoking defendant's probation for controlled substance offenses, the trial court did not err in ordering him to serve a 40-year sentence, under § 5-4-309(f)(1)(A), where it could have done originally; this section was inapplicable to the case because no sentence was originally imposed on defendant, he was placed on probation and fined. Cox v. State, 365 Ark. 358, 229 S.W.3d 883 (2006).

Cited: Ward v. State, 2010 Ark. App. 79, 374 S.W.3d 62 (2010).

Subchapter 6 — Parole — Eligibility

SECTION.
16-93-605. [Repealed.]
16-93-606. Parole eligibility — Felonies committed on or after April 1, 1983 but before January 1, 1994 — Classification of inmates.
16-93-607. Parole eligibility — Felonies committed on or after

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Effective Dates. Acts 2013, No. 136, § 2: Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain sex offenses qualify for mandatory parole under the current parole laws; that sex offenses are very serious crimes and parole for those offenses should be discretionary; and that this act is immediately necessary because those persons who will be required to register as sex offenders upon release from the Department of Correction should first serve a meaningful sentence in prison before being eligible for mandatory parole. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-93-605. [Repealed.]

Publisher's Notes. This section, concerning felonies committed on or after April 1, 1983 — purpose and construction of sections, was repealed by Acts 2011, No. 570, § 92. The section was derived from Acts 1983, No. 825, § 5; A.S.A. 1947, § 43-2830.5.

16-93-606. Parole eligibility — Felonies committed on or after April 1, 1983 but before January 1, 1994 — Classification of inmates.

(a) As used in this section, "felony" means a crime classified as Class Y, Class A, or Class B by the laws of this state.

(b) For the purposes of § 16-93-607, inmates shall be classified as follows:

(1) A first offender is an inmate convicted of one (1) or more felonies but who has not been incarcerated in some correctional institution in the United States, whether local, state, or federal, for a crime that was a felony under the laws of the jurisdiction in which the offender was

incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified;

(2) A second offender is an inmate convicted of two (2) or more felonies and who has been once incarcerated in some correctional institution in the United States, whether local, state, or federal, for a crime that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified;

(3) A third offender is an inmate convicted of three (3) or more felonies and who has been twice incarcerated in some correctional institution in the United States, whether local, state, or federal, for a crime that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified; and

(4) A fourth offender is an inmate convicted of four (4) or more felonies and who has been incarcerated in some correctional institution in the United States, whether local, state, or federal, three (3) or more times for a crime that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified.

History. Acts 1983, No. 825, §§ 1, 2; A.S.A. 1947, §§ 43-2830.1, 43-2830.2; Acts 2011, No. 570, § 93.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added "Parole eligibility" and "but before January 1, 1994" in the section heading; and substituted "that" for "which" in four places.

16-93-607. Parole eligibility — Felonies committed on or after April 1, 1983 but before January 1, 1994.

(a) As used in this section, "felony" means a crime classified as Class Y, Class A, or Class B by the laws of this state.

(b) A person who committed a felony prior to April 1, 1983, and who was convicted and incarcerated for that felony, shall be eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed.

(c) A person who commits felonies on or after April 1, 1983, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have their sentence commuted by the Governor, as provided by law. An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive

clemency. Upon commutation, the inmate is eligible for release on parole as provided in this section;

(2) An inmate classified as a first offender under § 16-93-606, except one under the age of twenty-one (21) years as described in subsection (d) of this section and except one who pleads guilty or has been convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-third (⅓) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances. However, if the trier of fact determines that a deadly weapon was used in the commission of the crime, a first offender twenty-one (21) years of age or older is not eligible for release on parole until a minimum of one-half (½) of the sentence is served, with credit for good-time allowances;

(3) An inmate classified as a second offender under § 16-93-606 and one who pleads guilty or was convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-half (½) of his or her sentence shall have been served, with credit for good-time allowances, or one-half (½) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances;

(4) An inmate classified as a third offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of three-fourths (¾) of his or her sentence shall have been served, with credit for good-time allowances, or three-fourths (¾) of the time to which the sentence is commuted by executive clemency shall have been served, with credit for good-time allowances; and

(5) An inmate classified as a fourth offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for parole, but he or she shall be entitled to good-time allowances as provided by law.

(d) Any person under the age of twenty-one (21) years who is first convicted of a felony and committed to the first offender penal institution or to the Department of Correction for a term of years is eligible for parole at any time unless a minimum time to be served is imposed consisting of not more than one-third (⅓) of the total time sentenced. In the event the individual is sentenced to a minimum time to be served, he or she is eligible for release on parole after serving the minimum time prescribed, with credit for good-time allowances, and for commutation by the exercise of executive clemency.

(e)(1) When any convicted felon, while on parole, is convicted of another felony, the felon is to be committed to the Department of Correction to serve the remainder of his or her original sentence, including any portion suspended, with credit for good-time allowances. Upon conviction for the subsequent felony, the court shall require the sentence for the subsequent felony to be served consecutively with the sentence for the previous felony.

(2) Any person found guilty of a felony and placed on probation or suspended sentence therefor who is subsequently found guilty of another felony committed while on probation or suspended sentence is to be committed to the Department of Correction to serve the remainder of his or her suspended sentence plus the sentence imposed for the subsequent felony. The sentence imposed for the subsequent felony is to be served consecutively with the remainder of the suspended sentence.

(f) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts are to be considered as a single commitment reflecting the cumulative sentence to be served.

(g) Nothing in this section shall be construed to reduce, lessen, or in any manner take away or affect the good-time allowances earned by any individual prior to April 1, 1983.

History. Acts 1983, No. 825, §§ 1, 3; A.S.A. 1947, §§ 43-2830.1, 43-2830.3; Acts 2011, No. 570, § 94.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added "Parole eligibility" and "but before January 1, 1994" in the section heading.

16-93-608. Parole eligibility — Class C or Class D felonies committed on or after April 1, 1983 but before January 1, 1994.

A person who commits a Class C felony or Class D felony on or after April 1, 1983, and who is incarcerated therefor is eligible for release on parole after having served one-third (⅓) of his or her sentence, with credit for good-time allowances, or one-third (⅓) of the time to which his or her sentence is commuted by executive clemency, with credit for good-time allowances.

History. Acts 1983, No. 825, § 4; A.S.A. 1947, § 43-2830.4; Acts 2011, No. 570, § 95.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added "Parole eligibility" and "but before January 1, 1994" in the section heading.

16-93-609. Effect of more than one conviction for certain felonies.

CASE NOTES

Cited: Smith v. Hobbs, 2012 Ark. 360, — S.W.3d — (2012).

16-93-611. [Repealed.]

Publisher's Notes. This section, concerning class Y felonies, was repealed by Acts 2011, No. 570, § 96. The section was derived from Acts 1995, No. 1326, § 1; 1997, No. 945, § 1; 1997, No. 1197, § 2; 1999, No. 717, § 1; 1999, No. 1268, § 4;

1999, No. 1337, § 1; 2005, No. 1034, § 1; 2009, No. 363, § 1.

CASE NOTES

Analysis

Constitutionality.
Applicability.
Eligibility for Parole.

Constitutionality.

This section (repealed in 2011), which was amended to repeal a sunset provision of a rule requiring inmates convicted of manufacturing methamphetamine to serve at least 70 percent of their sentences before being eligible for parole, was constitutional under Ark. Const. Art. 5, § 23, because the constitutional provision referred only to enactment of laws by reference to their titles and did not prohibit repeal of laws by reference to their titles. Rowe v. Hobbs, 2012 Ark. 244, — S.W.3d — (2012).

Applicability.

Circuit court exceeded its authority in ruling on a parolee's motion, that the 70 percent parole-eligibility rule in this section was unconstitutionally revoked by Act 1782, because the ruling was entered almost a year after sentencing and because Ark. R. Civ. P. 60(a), allowing modification of a judgment, did not apply to criminal proceedings. State v. Rowe, 374 Ark. 19, 285 S.W.3d 614 (2008).

Counsel was not ineffective for failing to challenge the constitutionality and effect of the 70 percent law; the status of defendants' parole eligibility was immaterial to whether the decision reached by the jury would have been different absent the alleged errors, which was the standard under Strickland. Myers v. State, 2012 Ark. 143, — S.W.3d — (2012).

Eligibility for Parole.

After defendant's probation was revoked, trial counsel was not ineffective for failing to object to the trial court's determination that defendant had to serve 70 percent of his sentence before parole eligibility because, under subdivision (a)(1) of this section, a person convicted of possessing drug paraphernalia with the intent to manufacture methamphetamine and sentenced to imprisonment is not eligible for parole until serving 70 percent of any sentence received. Cox v. State, 365 Ark. 358, 229 S.W.3d 883 (2006).

Habeas petition of inmate convicted of first-degree murder was properly denied, pursuant to 28 U.S.C.S. § 2254(d), as the state courts did not unreasonably determine that inmate's representation was constitutionally effective even though he failed to inform inmate about the Arkansas rule requiring him to serve 70% of his sentence before being paroled. Buchheit v. Norris, 459 F.3d 849 (8th Cir. 2006).

16-93-612. Parole eligibility — Date of offense.

(a) A person's parole eligibility shall be determined by the laws in effect at the time of the offense for which he or she is sentenced to the Department of Correction.

(b) For an offender serving a sentence for a felony committed before April 1, 1977, § 16-93-601 governs that person's parole eligibility.

(c) For an offender serving a sentence for a felony committed between April 1, 1977, and April 1, 1983, § 16-93-604 governs that person's parole eligibility.

(d) For an offender serving a sentence for a felony committed on or after April 1, 1983, but before January 1, 1994, § 16-93-607 governs that person's parole eligibility.

(e) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-614 governs that person's parole eligibility, unless otherwise noted and except:

(1) If the felony is murder in the first degree, § 5-10-102, kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the offense occurred after July 28, 1995, § 16-93-618 governs that person's parole eligibility; or

(2) If the felony is manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, or possession of drug paraphernalia with the intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the offense occurred after April 9, 1999, § 16-93-618 governs that person's parole eligibility;

(f) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-615 governs that person's parole eligibility procedures.

History. Acts 2011, No. 570, § 97.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-613. Parole eligibility — Class Y, Class A, or Class B felonies.

(a) A person who commits a Class Y, Class A, or Class B felony, except those drug offenses addressed in § 16-93-618 or those Class Y felonies addressed in § 16-93-614 or § 16-93-618, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have his or her sentence commuted by the Governor, as provided by law; and

(2)(A) An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency.

(B) Upon commutation, the inmate is eligible for release on parole as provided in this subchapter.

(b) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts are to be considered as a single commitment reflecting the cumulative sentence to be served.

History. Acts 2011, No. 570, § 98.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-614. Parole eligibility — Offenses committed after January 1, 1994.

(a) As used in this section and §§ 16-93-615 — 16-93-617, "felonies" means those crimes classified as Class Y, Class A, Class B, Class C, Class D, or unclassified felonies by the laws of this state.

(b)(1) A person who committed a felony before January 1, 1994, and who was convicted and incarcerated for that felony shall be eligible for release on parole under this section and §§ 16-93-615 — 16-93-617 in accordance with the parole eligibility law in effect at the time the crime was committed.

(2) A person who committed a target offense under the Community Punishment Act, § 16-93-1201 et seq., before January 1, 1994, and who has not been sentenced to a term of incarceration may waive the right to be released under the parole eligibility law in effect at the time the crime was committed and shall become eligible for judicial transfer pursuant to the transfer provisions provided in subdivision (c)(2) of this section.

(3) A person who has committed a felony who is within a target group as currently defined under § 16-93-1202(10) and who is released on parole shall be eligible, pursuant to rules and regulations established by the Parole Board, for commitment to a community correction facility if he or she is found to be in violation of any of his or her parole conditions, unless the parole violation constitutes a nontarget felony offense.

(c) A person who commits a felony on or after January 1, 1994, and who shall be convicted and incarcerated for that felony shall be eligible for transfer to community correction as follows:

(1)(A) An inmate under sentence of death or life imprisonment without parole shall not be eligible for transfer, but may be pardoned or have his or her sentence commuted by the Governor as provided by law.

(B) An inmate sentenced to life imprisonment shall not be eligible for transfer unless his or her sentence is commuted to a term of years by executive clemency.

(C) Upon commutation, an inmate shall be eligible for transfer as provided in this section;

(2)(A)(i)*(a)* An offender convicted of a target offense under the Community Punishment Act, § 16-93-1201 et seq., may be committed to the Department of Correction and judicially transferred to the Department of Community Correction by specific provision in the commitment that the trial court order such a transfer.

(b) No other offender is eligible for transfer to a Department of Community Correction facility.

(ii) A copy of the commitment shall be forwarded immediately to the Department of Correction and to the Department of Community Correction.

(iii) In the event that an offender is sentenced to the Department of Correction without judicial transfer on one (1) sentence and concurrently sentenced to the Department of Correction with judicial transfer on another sentence, the offender shall remain in the Department of Correction, and the sentence with judicial transfer may be discharged in the same manner as that of an offender transferred back to the Department of Correction.

(B) The Department of Community Correction shall take over supervision of the offender in accordance with the order of the court.

(C) The Department of Community Correction shall provide for the appropriate disposition of the offender as expeditiously as practicable under rules and regulations developed by the Board of Corrections.

(D) The offender shall not be transported to the Department of Correction on the initial placement in a Department of Community Correction facility pursuant to a judicial transfer.

(E) An offender who is transferred back to the Department of Correction for disciplinary reasons may be considered for transfer to Department of Community Correction supervision after earning good-time credit equal to one-half (½) of the remainder of his or her sentence.

(F) An offender who is sentenced after July 31, 2007, and who is transferred back to the Department of Correction for administrative reasons is eligible for transfer to Department of Community Correction supervision in the same manner as an offender who is sentenced to the Department of Correction without a judicial transfer to the Department of Community Correction; and

(3)(A) Every other classified or unclassified felon who is incarcerated therefor shall be eligible for transfer to community punishment after having served one-third (⅓) or one-half (½), with credit for meritorious good time, of his or her sentence depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half (½), with credit for meritorious good time, of the time to which his or her sentence is commuted by executive clemency.

(B) For example, a six-year sentence with optimal meritorious good-time credits will make the offender eligible for transfer in one (1) year if he or she is required to serve one-third (⅓) of his or her sentence, or one and one-half (1½) years if he or she is required to serve one-half (½) of his or her sentence.

History. Acts 2011, No. 570, § 99.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-615. Parole eligibility procedures — Offenses committed after January 1, 1994.

(a)(1)(A) An inmate under sentence for any felony, except those listed in subsection (b) of this section, shall be transferred from the Department of Correction to the Department of Community Correction under this section, § 16-93-614, § 16-93-616, and § 16-93-617, subject to rules promulgated by the Board of Corrections and conditions set by the Parole Board.

(B) The determination under subdivision (a)(1)(A) of this section shall be made by reviewing information such as the result of the

risk-needs assessment to inform the decision of whether to release a person on parole by quantifying that person's risk to reoffend, and if parole is granted, this information shall be used to set conditions for supervision.

(C) The Parole Board shall begin transfer release proceedings or a preliminary review under this subchapter no later than six (6) months before a person's transfer eligibility date, and the Parole Board shall authorize jacket review procedures no later than six (6) months before a person's transfer eligibility at all institutions holding parole-eligible inmates to prepare parole applications.

(D) This review may be conducted without a hearing when the inmate has not received a major disciplinary report against him or her that resulted in the loss of good time, there has not been a request by a victim to have input on transfer conditions, and there is no indication in the risk-needs assessment review that special conditions need to be placed on the inmate.

(2)(A) When one (1) or more of the circumstances in subdivision (a)(1) of this section are present, the Parole Board shall conduct a hearing to determine the appropriateness of the inmate for transfer.

(B) The Parole Board has two (2) options:

(i) To transfer the individual to the Department of Community Correction accompanied by notice of conditions of the transfer, including without limitation:

(a) Supervision levels;

(b) Economic fee sanction;

(c) Treatment program;

(d) Programming requirements; and

(e) Facility placement when appropriate; or

(ii) To deny transfer based on a set of established criteria and to accompany the denial with a prescribed course of action to be undertaken by the inmate to rectify the Parole Board's concerns.

(C) Upon completion of the course of action determined by the Parole Board and after final review of the inmate's file to ensure successful completion, the Parole Board shall authorize the inmate's transfer to the Department of Community Correction under this section, § 16-93-614, § 16-93-616, and § 16-93-617, in accordance with administrative policies and procedures governing the transfer and subject to conditions attached to the transfer.

(3) Should an inmate fail to fulfill the course of action outlined by the Parole Board to facilitate transfer to community correction, it shall be the responsibility of the inmate to petition the Parole Board for rehearing.

(4)(A) The Parole Board shall conduct open meetings and shall make public its findings for each eligible candidate for parole.

(B)(i) Open meetings held under subsection (a)(2)(A) of this section may be conducted through video-conference technology if the person is housed at that time in a county jail and if the technology is available.

(ii) Open meetings utilizing video-conference technology shall be conducted in public.

(5) Inmate interviews may be closed to the public.

(b)(1) An inmate under sentence for one (1) of the following felonies is eligible for discretionary transfer to the Department of Community Correction by the Parole Board after having served one-third (1/3) or one-half (1/2) of his or her sentence, with credit for meritorious good time, depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half (1/2) of the time to which his or her sentence is commuted by executive clemency, with credit for meritorious good time:

(A) Unless the offense is listed under § 16-93-612(e)(1), the following homicide offenses:

(i) Capital murder, § 5-10-101, or attempted capital murder;

(ii) Murder in the first degree, § 5-10-102, or attempted murder in the first degree;

(iii) Murder in the second degree, § 5-10-103;

(iv) Manslaughter, § 5-10-104;

(v) Negligent homicide, § 5-10-105; or

(vi) An offense under § 5-54-201 et seq.;

(B) Unless the offense is listed under § 16-93-612(e)(1), the following Class Y felonies:

(i) Kidnapping, § 5-11-102;

(ii) Aggravated robbery, § 5-12-103, or attempted aggravated robbery;

(iii) Terroristic act, § 5-13-310;

(iv) Causing a catastrophe, § 5-38-202(a);

(v) Arson, § 5-38-301;

(vi) Aggravated residential burglary, § 5-39-204; or

(vii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(C) Unless the offense is listed under § 16-93-612(e)(1), an offense for which the inmate is required upon release to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(D) Battery in the first degree, § 5-13-201;

(E) Domestic battering in the first degree, § 5-26-303;

(F) Engaging in a continuing criminal enterprise, § 5-64-405; or

(G) Simultaneous possession of drugs and firearms, § 5-74-106.

(2) The transfer of an offender convicted of an offense listed in subdivision (b)(1) of this section is not automatic.

(3)(A) Review of an inmate convicted of the enumerated offenses in subdivision (b)(1) of this section shall be based upon policies and procedures adopted by the Parole Board for the review, and the Parole Board shall conduct a risk-needs assessment review.

(B) The policies and procedures shall include a provision for notification of the victim or victims that a hearing shall be held and records kept of the proceedings and that there be a listing of the criteria upon which a denial may be based.

(4) Any transfer of an offender specified in this subsection shall be issued upon an order, duly adopted, of the Parole Board in accordance with such policies and procedures.

(5) After the Parole Board has fully considered and denied the transfer of an offender sentenced for committing an offense listed in subdivision (b)(1) of this section, the Parole Board may delay any reconsideration of the transfer for a maximum period of two (2) years.

(6) Notification of the court, prosecutor, sheriff, and the victim or the victim's next of kin for a person convicted of an offense listed in subdivision (b)(1) of this section shall follow the procedures set forth below:

(A)(i) Before the Parole Board shall grant any transfer, the Parole Board shall solicit the written or oral recommendations of the committing court, the prosecuting attorney, and the sheriff of the county from which the inmate was committed.

(ii) If the person whose transfer is being considered by the Parole Board was convicted of one (1) of the offenses enumerated in subdivision (b)(1) of this section, the Parole Board shall also notify the victim of the crime or the victim's next of kin of the transfer hearing and shall solicit written or oral recommendations of the victim or his or her next of kin regarding the granting of the transfer unless the prosecuting attorney has notified the Parole Board at the time of commitment of the prisoner that the victim or his or her next of kin does not want to be notified of future transfer hearings.

(iii) The recommendations shall not be binding upon the Parole Board in the granting of any transfer but shall be maintained in the inmate's file.

(iv) When soliciting recommendations from a victim of a crime, the Parole Board shall notify the victim or his or her next of kin of the date, time, and place of the transfer hearing;

(B)(i) The Parole Board shall not schedule transfer hearings at which victims or relatives of victims of crimes are invited to appear at a facility wherein inmates are housed other than the Central Administration Building of the Department of Correction at Pine Bluff.

(ii) Nothing herein shall be construed as prohibiting the Parole Board from conducting transfer hearings in two (2) sessions, one (1) at the place of the inmate's incarceration for interviews with the inmate, the inmate's witnesses, and correctional personnel, and the second session for victims and relatives of victims as set out in subdivision (b)(6)(B)(i) of this section;

(C)(i) At the time that any person eligible under subdivision (c)(1) of this section is transferred by the Parole Board, the Department of Community Correction shall give written notice of the granting of the transfer to the sheriff, the committing court, and the chief of police of each city of the first class of the county from which the person was sentenced.

(ii) If the person is transferred to a county other than that from which he or she was committed, the Parole Board shall give notice to

the chief of police or marshal of the city to which he or she is transferred, to the chief of police of each city of the first class and the sheriff of the county to which he or she is transferred, and to the sheriff of the county from which the person was committed; and

(D)(i) It shall be the responsibility of the prosecuting attorney of the county from which the inmate was committed to notify the Parole Board at the time of commitment of the desire of the victim or his or her next of kin to be notified of any future transfer hearings and to forward to the Parole Board the last known address and telephone number of the victim or his or her next of kin.

(ii) It shall be the responsibility of the victim or his or her next of kin to notify the Parole Board of any change in address or telephone number.

(iii) It shall be the responsibility of the victim or his or her next of kin to notify the Parole Board after the date of commitment of any change in regard to the desire to be notified of any future transfer hearings.

(c)(1) In all other felonies, before the Parole Board sets conditions for transfer of an inmate to community punishment, a victim, or his or her next of kin in cases in which the victim is unable to express his or her wishes, who has expressed the wish to be consulted by the Parole Board shall be notified of the date, time, and place of the transfer hearing.

(2)(A) A victim or his or her next of kin who wishes to be consulted by the Parole Board shall inform the Parole Board in writing at the time of sentencing.

(B) A victim or his or her next of kin who does not so inform the Parole Board shall not be notified by the Parole Board.

(3)(A) Victim input to the Parole Board shall be limited to oral or written recommendations on conditions relevant to the offender under review for transfer.

(B) The recommendations shall not be binding on the Parole Board, but shall be given due consideration within the resources available for transfer.

(d)(1) The Parole Board shall approve a set of conditions that shall be applicable to all inmates transferred from the Department of Correction to the Department of Community Correction.

(2) The set of conditions is subject to periodic review and revision as the Parole Board deems necessary.

(e)(1) The course of action required by the Parole Board shall not be outside the current resources of the Department of Correction nor the conditions set be outside the current resources of the Department of Community Correction.

(2) However, the Department of Correction and Department of Community Correction shall strive to accommodate the actions required by the Board of Corrections to the best of their ability.

(f) Transfer is not an award of clemency, and it shall not be considered as a reduction of sentence or a pardon.

(g) Every inmate while on transfer status shall remain in the legal custody of the Department of Correction under the supervision of the

Department of Community Correction and subject to the orders of the Parole Board.

(h) An inmate who is sentenced under the provisions of § 5-4-501(c) or § 5-4-501(d) for a serious violent felony or a felony involving violence may be considered eligible for parole or for community correction transfer upon reaching regular parole or transfer eligibility, but only after reaching a minimum age of fifty-five (55) years.

(i) Decisions on parole release, courses of action applicable prior to transfer, and transfer conditions to be set by the Parole Board shall be based on a reasoned and rational plan developed in conjunction with an accepted risk-needs assessment tool such that each decision is defensible based on preestablished criteria.

History. Acts 2011, No. 570, § 100; 2013, No. 136, § 1; 2013, No. 485, § 1.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Pursuant to § 1-2-207, subdivision (b)(1) of this section is set out as amended by Acts 2013, No. 485, § 1. Subdivision (b)(1) of this section was also amended by Acts 2013, No. 136, § 1, to read as follows:

"(b)(1) An inmate under sentence for one (1) of the following felonies is eligible for discretionary transfer to the Department of Community Correction by the Parole Board after having served one-third (⅓) or one-half (½) of his or her sentence, with credit for meritorious good time, depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half (½) of the time to which his or her sentence is commuted by executive clemency, with credit for meritorious good time:

"(A) Unless the offense is listed under § 16-93-612(e)(1), the following homicide offenses:

"(i) Capital murder, § 5-10-101;

"(ii) Murder in the first degree, § 5-10-102;

"(iii) Murder in the second degree, § 5-10-103;

"(iv) Manslaughter, § 5-10-104; or

"(v) Negligent homicide, § 5-10-105;

"(B) An offense for which the inmate is required upon release to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., unless the offense is listed under § 16-93-612(e)(1);

"(C) Battery in the first degree, § 5-13-201;

"(D) Domestic battering in the first degree, § 5-26-303;

"(E) Unless the offense is listed under § 16-93-612(e)(1), the following Class Y felonies:

"(i) Kidnapping, § 5-11-102;

"(ii) Aggravated robbery, § 5-12-103; or

"(iii) Causing a catastrophe, § 5-38-202(a);

"(F) Engaging in a continuing criminal enterprise, § 5-64-405; or

"(G) Simultaneous possession of drugs and firearms, § 5-74-106."

Amendments. The 2013 amendment by No. 136 rewrote (b)(1)(A) and (b)(1)(B).

The 2013 amendment by No. 485 rewrote (b)(1).

16-93-616. Parole eligibility procedures — Offenses committed after January 1, 1994 — Computation of sentence.

(a)(1) Time served for a sentence shall be deemed to begin on the day sentence is imposed, not on the day a prisoner is received by the Department of Correction.

(2) Time served shall continue only during the time in which an individual is actually confined in a county jail or other local place of

lawful confinement or while under the custody and supervision of the department.

(3) Once sentenced to the department, the department shall retain legal custody of the inmate for the duration of the original sentence.

(b) The sentencing judge shall direct, when he or she imposes sentence, that time already served by the defendant in jail or other place of detention shall be credited against the sentence.

History. Acts 2011, No. 570, § 101.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-617. Parole eligibility procedures — Offenses committed after January 1, 1994 — Revocation of transfer.

(a) In the event an offender transferred under this section, §§ 16-93-614 — 16-93-616, or § 16-93-618 violates the terms or conditions of his or her transfer, a hearing shall follow all applicable legal requirements and shall be subject to any additional policies, rules, and regulations set by the Parole Board.

(b)(1) In the event an offender transferred under this section and §§ 16-93-614 — 16-93-617, or § 16-93-618 is found to be or becomes ineligible for transfer into a Department of Community Correction facility, he or she shall be transported to the Department of Correction to serve the remainder of his sentence.

(2) Notice of the ineligibility and the reasons therefor shall be provided to the offender, and a hearing may be requested before the board if the offender contests the factual basis of the ineligibility. Otherwise, the board may administratively approve the transfer to the Department of Correction.

(c) An offender who is judicially transferred to a Department of Community Correction facility and subsequently transferred back to the Department of Correction by the board for disciplinary or administrative reasons may not become eligible for any further transfer under § 16-93-614(c)(2)(E) and (F).

History. Acts 2011, No. 570, § 102.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-618. Parole eligibility — Certain Class Y felony offenses and certain methamphetamine offenses — Seventy-percent crimes.

(a)(1) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, a person who is found guilty of or pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(I) of this section shall not be eligible for parole or community correction transfer, except as provided in subdivision (a)(3) or subsection (c) of this section,

until the person serves seventy percent (70%) of the term of imprisonment to which the person is sentenced, including a sentence prescribed under § 5-4-501:

(A) Murder in the first degree, § 5-10-102;

(B) Kidnapping, Class Y felony, § 5-11-102;

(C) Aggravated robbery, § 5-12-103;

(D) Rape, § 5-14-103;

(E) Trafficking of persons, Class Y felony, § 5-18-103;

(F) Causing a catastrophe, § 5-38-202(a);

(G) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;

(H) Trafficking methamphetamine, § 5-64-440(b)(1); or

(I) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

(2)(A) The seventy-percent provision of subdivision (a)(1) of this section has no application to any person who is found guilty of or pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102, regardless of the date of the offense.

(B) The provisions of this section shall apply retroactively to all persons presently serving a sentence for kidnapping, Class B felony, § 5-11-102.

(3)(A)(i) Regardless of the date of the offense, the seventy-percent provision under subdivision (a)(1) of this section shall include credit for the award of meritorious good time under § 12-29-201 to any person who is found guilty of or pleads guilty or nolo contendere to:

(a) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;

(b) Trafficking methamphetamine, § 5-64-440(b)(1); or

(c) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

(ii) Regardless of the date of the offense and unless the person is sentenced to a term of life imprisonment, the seventy-percent provision under subdivision (a)(1) of this section may include credit for the award of meritorious good time under § 12-29-202 to any person who is found guilty of or pleads guilty or nolo contendere to:

(a) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;

(b) Trafficking methamphetamine, § 5-64-440(b)(1); or

(c) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

(B) In no event shall the time served by any person who is found guilty of or pleads guilty or nolo contendere to manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, trafficking methamphetamine, § 5-64-440(b)(1), or possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443(a)(2), be reduced to less than fifty percent (50%) of the person's original sentence.

(4)(A) When any person sentenced under subdivision (a)(3) of this section becomes eligible for parole, the Department of Community

Correction shall send a notice of the parole hearing to the prosecuting attorney of the judicial district or districts in which the person was found guilty or pleaded guilty or nolo contendere to an offense listed in subdivision (a)(1) of this section.

(B) The notice shall contain the following language in 12-point capital letters bold type: "INMATE SENTENCED UNDER ARKANSAS CODE § 16-93-618".

(b) A jury may be instructed under § 16-97-103 regarding the awarding of meritorious good time under subdivision (a)(3) of this section.

(c) The sentencing judge, in his or her discretion, may waive subsection (a) of this section under the following circumstances:

(1) The defendant was a juvenile at the time of the offense;

(2) The juvenile was merely an accomplice to the offense; and

(3) The offense occurred on or after July 28, 1995.

(d) The awarding of meritorious good time under § 12-29-201 or § 12-29-202 does not apply to persons sentenced under subdivisions (a)(1)(A)-(E) of this section.

(e) A person who commits the offense of possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, after July 27, 2011, shall not be subject to the provisions of this section.

History. Acts 2011, No. 570, § 103; 2013, No. 132, § 7; 2013, No. 133, § 7; 2013, No. 1335, § 4.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Acts 2013, No. 133, § 1, provided: "Title. This act shall be cited as the 'Arkansas Human Trafficking Act of 2013'."

Amendments. The 2013 amendment by identical acts Nos. 132 and 133, in (a)(1), substituted "(a)(1)(A)-(I)" for "(a)(1)(A)-(H)," and "community correction" for "community punishment"; and inserted present (a)(1)(E) and redesignated the remaining subsections accordingly.

The 2013 amendment by No. 1335, in (d), substituted "does not apply" for "shall not be applicable" and "(a)(1)(A)-(E)" for "(a)(1)(A)-(H)."

Subchapter 7 — Parole

16-93-701. Authority to grant and parameters.

(a)(1) The Parole Board may release on parole any individual eligible under the provisions of § 16-93-601 who is confined in any correctional institution administered by the Department of Correction, when in its opinion there is a reasonable probability that the prisoner can be released without detriment to the community or himself or herself.

(2) All paroles shall issue upon order, duly adopted, of the board.

(b)(1) Before ordering the release of any prisoner, the prisoner shall be interviewed by the board or a panel designated by the board and, for all parole decisions after January 1, 2012, the board shall conduct a risk-needs assessment review of all parole applicants.

(2)(A) The parole shall be ordered only for the best interest of society and not as an award for clemency.

(B) The parole shall not be considered as a reduction of sentence or a pardon.

(3) A prisoner shall be placed on parole only when the board believes that he or she is able and willing to fulfill the obligations of a law-abiding citizen.

(4) Every prisoner, while on parole, shall remain in the legal custody of the institution from which he or she was released, but shall be subject to the orders of the board.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 29; A.S.A. 1947, § 43-2808; Acts 1989, No. 937, § 6; 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment, in the section heading, substituted "Authority to grant" for "Grant" and "parameters" for "procedures generally"; added "and, for all parole decisions after January 1, 2012, the board shall conduct a risk-needs assessment review of all parole applicants" in (b)(1); and inserted "or she" in (b)(4).

16-93-702. Procedures — Required recommendations.

(a) Before the Parole Board shall grant any parole, the board shall solicit the written or oral recommendations of the committing court, the prosecuting attorney, and the sheriff of the county from which the inmate was committed.

(b) If the person whose parole is being considered by the board was convicted of capital murder, § 5-10-101, or of a Class Y, Class A, or Class B felony, or any violent or sexual offense, the board shall also notify the victim of the crime, or the victim's next of kin, of the parole hearing and shall solicit written or oral recommendations of the victim or the victim's next of kin regarding the granting of the parole, unless the prosecuting attorney has notified the board at the time of commitment of the prisoner that the victim or the victim's next of kin does not want to be notified of future parole hearings.

(c) The board shall retain a copy of the recommendations in the board's file.

(d) The recommendations shall not be binding upon the board in the granting of any parole but shall be maintained in a file that shall be open to the public during reasonable business hours.

(e) When soliciting recommendations from a victim of a crime, the board shall notify the victim or the victim's next of kin of the date, time, and place of the parole hearing.

History. Acts 1969, No. 153, § 1; 1981, No. 530, § 1; 1983, No. 8, § 1; 1983, No. 246, § 1; 1985, No. 269, § 1; 1985, No. 917, § 1; A.S.A. 1947, § 43-2819; Acts 1997, No. 1262, § 17; 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Procedures" for "Grant" in the section heading; and substituted "that" for "which" in (d).

16-93-703. Procedures — Place of hearings.

(a) The Parole Board shall not schedule parole hearings at which victims or relatives of victims of crime are invited to appear at a facility wherein inmates are housed other than the Central Administration Building of the Department of Correction at Pine Bluff.

(b) Nothing in this section shall be construed as prohibiting the board from conducting parole hearings in two (2) sessions, one (1) at the place of the inmate's incarceration for interviews with the inmate, the inmate's witnesses, and correctional personnel, and the second session for victims and relatives of victims as set out in subsection (a) of this section.

History. Acts 1983, No. 525, §§ 1, 2; A.S.A. 1947, §§ 43-2819.1, 43-2819.2; Acts 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Procedures" for "Grant" in the section heading.

16-93-704. Procedures — Notice to law enforcement personnel and committing court.

(a) At the time that any person is paroled by the Parole Board, the board shall give written notice of the granting of the parole to the sheriff, the committing court, and the chief of police of all cities of the first class of the county from which the person was sentenced.

(b) If the person is paroled to a county other than that from which he or she was committed, the board shall give notice to the chief of police or marshal of the city to which he or she is paroled, to the chief of police of all cities of the first class, to the sheriff of the county to which he or she is paroled, and to the sheriff of the county from which the person was committed.

History. Acts 1969, No. 153, § 2; 1971, No. 33, § 1; A.S.A. 1947, § 43-2820; Acts 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Procedures" for "Grant" in the section heading; and substituted "all cities of the first class, to the sheriff" for "all cities of the first class and to the sheriff" in (b).

16-93-705. Revocation — Procedures and hearings generally.

(a)(1)(A)(i) At any time during a parolee's release on parole, the Parole Board may issue a warrant for the arrest of the parolee for violation of any conditions of parole or may issue a notice to appear to answer a charge of a violation.

(ii) The Department of Community Correction shall provide the information necessary for the Parole Board to issue a warrant under subdivision (a)(1)(A)(i) of this section.

(B)(i) The Parole Board shall issue a warrant for the arrest of a parolee if the board determines that the parolee has been charged with a felony involving violence, as defined under § 5-4-501(d)(2), or a felony requiring registration under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(ii) The Department of Community Correction shall provide the information necessary for the Parole Board to issue a warrant under subdivision (a)(1)(B)(i) of this section.

(iii) A parolee arrested on a warrant issued under subdivision (a)(1)(B)(i) of this section shall be detained pending a mandatory parole revocation hearing.

(2) The warrant or notice shall be served personally upon the individual.

(3) The warrant shall authorize all officers named in the warrant to place the parolee in custody at any suitable detention facility pending a hearing.

(4) Any parole officer may arrest a parolee without a warrant or may deputize any officer with power of arrest to do so by giving him or her a written statement setting forth that the parolee, in the judgment of the parole officer, violated conditions of his or her parole.

(5) The written statement delivered with the parolee by the arresting officer to the official in charge of the detention facility to which the parolee is brought shall be sufficient warrant for detaining him or her pending disposition.

(6) If the board or its designee finds, by a preponderance of the evidence, that the parolee has inexcusably failed to comply with a condition of his or her parole, the parole may be revoked at any time prior to the expiration of the period of parole.

(7) A parolee for whose return a warrant has been issued by the board shall be deemed a fugitive from justice if it is found that the warrant cannot be served.

(8) The board shall determine whether the time from the issuance of the warrant to the date of arrest, or any part of it, shall be counted as time served under the sentence.

(b)(1) A parolee arrested for violation of parole shall be entitled to a preliminary hearing to determine whether there is reasonable cause to believe that he or she has violated a condition of parole.

(2) The hearing shall be conducted by the parole revocation judge for the board as soon as practical after arrest and reasonably near the place of the alleged violation or arrest.

(3) The parolee shall be given prior notice of the date, time, and location of the hearing, the purpose of the hearing, and the conditions of parole he or she is alleged to have violated.

(4) Except as provided in subsection (d) of this section, the parolee shall have the right to hear and controvert evidence against him or her, to offer evidence in his or her own behalf, and to be represented by counsel.

(5) If the parole revocation judge finds that there is reasonable cause to believe that the parolee has violated a condition of parole, the parole revocation judge may order the parolee returned to the custody of the Department of Correction for a revocation hearing before the board.

(6) If the parole revocation judge finds that there is reasonable cause to believe that the parolee has violated a condition of parole, the parole revocation judge may return the offender to parole supervision rather than to the custody of the Department of Correction and may impose additional supervision conditions in response to the violating conduct.

(7) If the parole revocation judge does not find reasonable cause, he or she shall order the parolee released from custody, but that action shall not bar the board from holding a hearing on the alleged violation of parole or from ordering the parolee to appear before it.

(8) The parole revocation judge shall prepare and furnish to the board and the parolee a summary of the hearing, including the substance of the evidence and testimony considered.

(c)(1)(A) Unless a parole revocation hearing is knowingly and intelligently waived by the parolee, a parole shall not be revoked except after a revocation hearing, which shall be conducted by the board or its designee within a reasonable period of time after the parolee's arrest.

(B) If a waiver is granted under subdivision (c)(1)(A) of this section, the parolee may subsequently appeal the waiver to the board.

(2) The parolee shall be given prior notice of the date, time, and location of the hearing, the purpose of the hearing, and the conditions of parole he or she is alleged to have violated.

(3) Except as provided in subsection (d) of this section, the parolee shall have the right to hear and controvert evidence against him or her, to offer evidence in his or her own defense, and to be represented by counsel.

(4) If parole is revoked, the board or its designee shall prepare and furnish to the parolee a written statement of evidence relied on and the reasons for revoking parole.

(d) At a preliminary hearing under subsection (b) of this section or a revocation hearing under subsection (c) of this section:

(1) The parolee shall have the right to confront and cross-examine adverse witnesses unless the parole revocation judge or the board or its designee specifically finds good cause for not allowing confrontation; and

(2) The parolee may introduce any relevant evidence of the alleged violation, including letters, affidavits, and other documentary evidence, regardless of its admissibility under the rules governing the admission of evidence.

(e) A preliminary hearing under subsection (b) of this section shall not be required if:

(1) The parolee waives a preliminary hearing; or

(2) Unless a parole revocation hearing is knowingly and intelligently waived by the parolee under subsection (c) of this section, the parole revocation hearing under subsection (c) of this section is held promptly after the arrest and reasonably near the place where the alleged violation occurred or where the parolee was arrested.

(f) A preliminary hearing under subsection (b) of this section and a revocation hearing under subsection (c) of this section shall not be necessary if the revocation is based on the parolee's conviction, guilty plea, or plea of nolo contendere to a felony offense for which he or she is sentenced to the Department of Correction or to any other state or federal penal institution.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 31; 1983, No. 771, § 1; A.S.A. 1947, § 43-2810; 2011, No. 570, § 104; 2013, No. 130, §§ 1, 2; 2013, No. 320, §§ 4, 5, 6; 2013, No. 1029, § 1.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Revocation — Procedures and hearings generally" for "Revocation — Return of parole violator — Hearings" in the section heading; and inserted (b)(6) and redesignated the remaining subdivisions accordingly.

The 2013 amendment by No. 130 redesignated (c)(1) as (c)(1)(A); added "Unless a parole revocation hearing is knowingly and intelligently waived by the parolee" in (c)(1)(A); added (c)(1)(b); and substituted "Unless a parole revocation hearing is knowingly and intelligently waived by the parolee under subsection (c) of this section, the parole" for "The" in (e)(2).

The 2013 amendment by No. 320 substituted "revocation judge" for "hearing examiner" in (b)(2), and (b)(5) through (b)(8); and substituted "parole revocation judge" for "hearing examiner" in (d)(1).

The 2013 amendment by No. 1029 added (a)(1)(A)(ii) and (a)(1)(B).

16-93-706. Revocation — Subpoena of witnesses and documents.

(a)(1) The Chair of the Parole Board or his or her designee, the hearing officer presiding over any preliminary hearing with respect to an alleged parole violation, the administrator of the board, or any member of the board pursuant to the authority of the board to meet and determine whether to revoke parole shall have the power to issue oaths and to subpoena witnesses to appear and testify and bring before the

hearing officer or the board any relevant books, papers, records, or documents.

(2) The subpoena shall be directed to any sheriff, coroner, or constable of any county where the designated witness resides or is found. The endorsed affidavit on the subpoena of any person of full age shall be proof of the service, which shall be served and returned in the same manner as subpoenas in civil actions in the circuit courts are served and returned.

(b) The fees and mileage expenses as prescribed by law for witnesses in civil cases shall be paid by the Department of Correction.

(c)(1) In case of failure or refusal by any person to comply with a subpoena issued under this section to testify or answer to any matter regarding which the person may be lawfully interrogated, any circuit court in this state, on application of the hearing officer or the chair, shall, in term or vacation, issue an attachment for the person and compel him or her to comply with the subpoena and appear before the hearing officer or the board and to produce any testimony and documents as may be required.

(2) The circuit court shall have the power to punish any contempt, in case of disobedience, as in civil cases, or it shall be a misdemeanor for a witness to refuse or neglect to appear and testify, punishable upon conviction by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

(d) Any person willfully testifying falsely under oath before the board or at a preliminary hearing in which probable cause for parole revocation is to be considered as to any matter material to a lawful inquiry by the board or hearing officer may be charged with perjury and upon conviction punished accordingly.

History. Acts 1975, No. 735, §§ 1-4; A.S.A. 1947, §§ 43-2824 — 43-2827; Acts 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "Subpoena of witnesses and documents" for "Powers of officials and circuit courts — Penalties" in the section heading.

16-93-708. Parole alternative — Home detention.

(a) As used in this section:

(1) "Approved electronic monitoring or supervising device" means an electronic device approved by the Board of Corrections that meets the minimum Federal Communications Commission regulations and requirements, and that utilizes available technology that is able to track a person's location and monitor his or her location;

(2) "Permanently incapacitated" means an inmate who, as determined by a licensed physician:

(A) Has a medical condition that is not necessarily terminal but renders him or her permanently and irreversibly incapacitated; and

(B) Requires immediate and long-term care; and

(3) "Terminally ill" means an inmate who, as determined by a licensed physician:

(A) Has an incurable condition caused by illness or disease; and

(B) Will likely die within two (2) years due to the illness or disease.

(b)(1)(A) Subject to the provisions of subdivision (b)(2) of this section, a defendant convicted of a felony or misdemeanor and sentenced to imprisonment may be incarcerated in a home detention program when the Director of the Department of Correction or the Director of the Department of Community Correction shall communicate to the Parole Board when, in the independent opinions of either a Department of Correction physician or Department of Community Correction physician and a consultant physician in Arkansas, an inmate is either terminally ill or permanently incapacitated and should be considered for transfer to parole supervision.

(B) The Director of the Department of Correction or the Director of the Department of Community Correction shall make the facts described in subdivision (b)(1)(A) of this section known to the Parole Board for consideration of early release to home detention.

(2) The Board of Corrections shall promulgate rules that will establish policy and procedures for incarceration in a home detention program.

(c)(1) In all instances where the Department of Correction may release any inmate to community supervision, in addition to all other conditions that may be imposed by the Department of Correction, the Department of Correction may require the criminal defendant to participate in a home detention program.

(2)(A) The term of the home detention shall not exceed the maximum number of years of imprisonment or supervision to which the inmate could be sentenced.

(B) The length of time the defendant participates in a home detention program and any good-time credit awarded shall be credited against the defendant's sentence.

(d) The Board of Corrections shall establish policy and procedures for participation in a home detention program, including, but not limited to, program criteria, terms, and conditions of release.

History. Acts 1991, No. 263, §§ 1-3; 1991, No. 307, §§ 1-3; 2005, No. 680, § 3; 2011, No. 570, § 104; 2013, No. 1335, § 5.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added "Parole alternative" in the section heading; inserted the introductory language of (a), the (a)(1) designation, (a)(2), and (a)(3); added "the Director of the Department of Correction ... considered for transfer to parole supervision" at the end of (b)(1)(A); deleted (b)(1)(A)(i) and (b)(1)(A)(ii); and substituted "Department of Correction" for "department" in three places in (c)(1).

The 2013 amendment substituted "utilizes available technology that is able to track a person's location and monitor his or her location" for "is limited in capability to recording or transmitting information as to the criminal defendant's presence in the home" in (a)(1).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Criminal Law, 28 U. Ark. Little Rock L. Rev. 335.

16-93-709. Sex offender may not reside with minors.

(a) Whenever an inmate in a facility of the Department of Correction who has been found guilty of or has pleaded guilty or nolo contendere to any sexual offense defined in § 5-14-101 et seq., or incest as defined by § 5-26-202, and the sexual offense or incest was perpetrated against a minor, becomes eligible for parole and makes application for release on parole, the Parole Board shall prohibit, as a condition of granting the parole, the parolee from residing upon parole in a residence with any minor, unless the board makes a specific finding that the inmate poses no danger to the minors residing in the residence.

(b) If the board, upon a hearing under § 16-93-705, finds, by a preponderance of the evidence, that the parolee has failed to comply with this condition of parole, the parole may be revoked and the parolee returned to the custody of the department.

History. Acts 1997, No. 1188, § 2; 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "under" for "pursuant to" in (b).

16-93-710. Parole for inmates who have served their term of imprisonment in a county jail prior to being processed into the Department of Correction.

(a)(1) Subject to conditions set by the Parole Board, an offender convicted of a felony and sentenced to a term of imprisonment of two (2) years or less in the Department of Correction, and who has served his or her term of imprisonment in a county jail prior to being processed into the Department of Correction, may be paroled from the Department of Correction county jail backup facility directly to the Department of Community Correction under parole supervision, and upon eligibility determination, processed for release by the board.

(2) Transfer release proceedings or a preliminary review under this subchapter shall begin no later than six (6) months prior to a person's transfer eligibility date, and the Parole Board shall authorize jacket review procedures at all institutions holding parole-eligible inmates to prepare parole applications to comply with this time frame.

(3) The jacket review will be conducted by staff either from the Department of Community Correction or by Department of Correction.

(b) An offender who has been found guilty of or pleaded guilty or nolo contendere to a violent offense as defined by § 5-4-501(c)(2) or a Class Y felony offense shall be ineligible under this section.

(c) As determined by the county sheriff, an offender who has committed violent or sexual acts while incarcerated in a county jail facility shall be ineligible to participate in the program established by this section.

History. Acts 2011, No. 570, § 104.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-711. Parole alternatives — Electronic monitoring of parolees.

(a) As used in this section, "approved electronic monitoring or supervising device" means a device described in § 16-93-708(a).

(b)(1)(A) Subject to the provisions of subdivision (b)(2) of this section, an inmate serving a sentence in the Department of Correction may be released from incarceration if the:

(i) Sentence was not the result of a jury or bench verdict;

(ii) Inmate has served one hundred twenty (120) days of his or her sentence;

(iii) Inmate has an approved parole plan;

(iv) Inmate was sentenced from a cell in the sentencing guidelines that does not include incarceration in the presumptive range;

(v) Conviction is for a Class C or Class D felony;

(vi) Conviction is not for a crime of violence, regardless of felony level;

(vii) Conviction is not a sex offense, regardless of felony level;

(viii) Conviction is not for manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;

(ix) Conviction is not for possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, if the conviction is a Class C felony or higher;

(x) Conviction is not a crime involving the threat of violence or bodily harm;

(xi) Conviction is not for a crime that resulted in a death; and

(xii) Inmate has not previously failed a drug court program.

(B) The Director of the Department of Correction shall make the facts described in subdivision (b)(1)(A) of this section known to the Parole Board for consideration of electronic monitoring.

(2) The Board of Corrections shall promulgate rules that will establish policy and procedures for an electronic monitoring program.

(c)(1) An inmate released from incarceration on parole under this section shall be supervised by the Department of Community Correction using electronic monitoring until the inmate's transfer eligibility date or for at least ninety (90) days of full compliance by the inmate, whichever is sooner.

(2)(A) The term of electronic monitoring shall not exceed the maximum number of years of imprisonment or supervision to which the inmate could be sentenced.

(B) The length of time the defendant participates in an electronic monitoring program and any good-time credit awarded shall be credited against the defendant's sentence.

History. Acts 2011, No. 570, § 104; 2013, No. 1335, § 6.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2013 amendment deleted "or the Director of the Department of Community Correction" following "Correction" in (b)(1)(B).

16-93-712. Parole supervision.

(a)(1) The Parole Board shall establish written policies and procedures governing the supervision of parolees designed to enhance public safety and to assist the parolees in reintegrating into society.

(2)(A) The supervision of parolees shall be based on evidence-based practices including a validated risk-needs assessment.

(B) Decisions shall target the parolee's criminal risk factors with appropriate supervision and treatment designed to reduce the likelihood of reoffense.

(b) A parole officer shall:

(1) Investigate each case referred to him or her by the Director of the Parole Board, the Department of Community Correction, or the prosecuting attorney;

(2) Furnish to each parolee under his or her supervision a written statement of the conditions of parole and instruct the parolee that he or she must stay in compliance with the conditions of parole or risk revocation under § 16-93-705;

(3) Develop a case plan for each individual who is assessed as being moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the parolee's conduct and condition through visitation, required reporting, or other methods and shall report to the board that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a parolee to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the parolee, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment;

(7) Make decisions with the assistance of the risk-needs assessment that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(8) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The department shall allocate resources, including the assignment of parole officers, to focus on moderate-risk and high-risk offenders as determined by the validated risk-needs assessment provided in subdivision (b)(6) of this section.

(2) The department shall require each public and private treatment and service provider that receives state funds for the treatment of or service for parolees to use evidence-based programs and practices.

(d)(1) The department shall have the authority to sanction a parolee administratively without engaging the revocation process under § 16-93-705.

(2)(A) The department shall develop an intermediate sanctions procedure and grid to guide a parole officer in determining the appropriate response to a violation of conditions of supervision.

(B) Intermediate sanctions administered by the department are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening or treatment, or both;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days.

(ii) Incarceration as an intermediate sanction shall not be used more than seven (7) times with an individual parolee, and no parolee shall accumulate more than twenty-one (21) days' incarceration as an intermediate sanction before the parole officer files for revocation under § 16-93-706.

History. Acts 2011, No. 570, § 104; 2013, No. 1415, § 1.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2013 amendment, in (d)(3)(E)(ii), substituted "seven (7)" for "ten (10)" and "twenty-one (21)" for "thirty (30)."

Subchapter 10 — Community Service Work — Acts 1989, No. 957

SECTION.

16-93-1001 — 16-93-1004. [Repealed.]

Publisher's Notes. This subchapter, concerning community service work — Acts 1989, No. 957, was repealed by Acts 2011, No. 570, § 105. The subchapter was derived from the following sources:

16-93-1001. Acts 1989, No. 957, § 1.

16-93-1002. Acts 1989, No. 957, § 2.

16-93-1003. Acts 1989, No. 957, § 6.

16-93-1004. Acts 1989, No. 957, §§ 3, 4; 1991, No. 545, §§ 1, 2.

Subchapter 11 — Community Service Work — Acts 1989, No. 613

16-93-1101 — 16-93-1105. [Repealed.]

Publisher's Notes. This subchapter, concerning community service work — Acts 1989, No. 613, was repealed by Acts 2011, No. 570, § 106. The subchapter was derived from the following sources:

16-93-1101. Acts 1989, No. 613, § 1.
16-93-1102. Acts 1989, No. 613, § 2.
16-93-1103. Acts 1989, No. 613, § 3.
16-93-1104. Acts 1989, No. 613, § 4; 1991, No. 542, § 5.
16-93-1105. Acts 1989, No. 613, § 5.

Subchapter 12 — Community Punishment

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-1201. Findings and determinations.

CASE NOTES

Cited: Arnold v. State, 2011 Ark. 395, — S.W.3d — (2011).

16-93-1202. Definitions. [Effective until January 1, 2014.]

As used in this subchapter:

(1) "Board" means the Board of Corrections;

(2) "Community correction" means:

(A) Probation, a judicially imposed criminal sanction permitting varying levels of supervision of eligible offenders in the community;

(B) Economic sanctions programs, including an active organized collection of fees, fines, restitution, day fines, day reporting centers, and penalties attached for nonpayment of fines;

(C) Home detention programs, ranging from curfew programs to house arrest with and without electronic monitoring;

(D) Community service programs, including both supervised and unsupervised work assignments and projects such that offenders provide substantial labor benefit to the community;

(E) Work-release programs, including residential and nonresidential forms of labor, with salary, in the community;

(F) Restitution programs, an organized collection and dissemination of restitution by a designated entity within the community punishment range of services, including, when necessary, the use of restitution centers such that the offender is held accountable and the victim receives restitution ordered by the court in a timely fashion;

(G)(i) Community correction facilities, multipurpose facilities encompassing security, punishment, and services such that offenders can be housed therein when necessary but can also be assigned to or access correction programs and services which are housed there.

(ii) Included therein are revocation centers, restitution centers, work-release centers, and community correction centers;

(H) Boot camps, highly regimented programs encompassing strict discipline, education, treatment, and counseling designed to have the greatest positive impact on the offender in the shortest period of time;

(I) Drug and alcohol treatment services, including both inpatient and outpatient drug and alcohol abuse treatment and counseling provided by qualified community correction service provider programs for correctional clients;

(J) Educational programs, including programs focused on the acquisition of basic learning skills, general educational developmental preparation, literacy training, and other applicable areas of education that are of value to correctional clients;

(K) Vocational programs, focused on the learning of a marketable skill by correctional clients utilizing qualified vocational and technical community correction service provider programs whenever possible;

(L) Job skills programs, focused on the acquisition of basic job skills, especially those related to how to get a job and how to keep a job;

(M) Mental health treatment services, including both inpatient and outpatient mental health, family, and psychological counseling and treatment provided by qualified community correction service provider programs for correctional clients;

(N) Parole, an administrative condition permitting state supervision of eligible offenders sentenced to state correctional facilities and released therefrom to community correction programs or supervision;

(O) Post prison supervision, an administrative condition permitting state supervision of offenders sentenced to state correctional facilities and transferred from there to community correction programs or community supervision; and

(P) Pretrial programs, including the supervision and monitoring of certain defendants while awaiting sentencing or disposition by a court;

(3) "Community correction service provider program" means a public or private organization which provides treatment, guidance, training, support, or other rehabilitative services to individual offenders, offender groups, and their families in such areas as health, education, vocational training, special education, social services, psychological counseling, alcohol and drug treatment, and other applicable correctional concerns;

(4) "Department of Community Correction" means the administrative structure in place to oversee the development and operation of community correction facilities, programs, and services, including probation and parole supervision;

(5) "Department of Correction" means the administrative structure in place to oversee the daily operation of secure prison facilities;

(6) "Eligibility" or "eligible offender" means any person convicted of a felony who is by law eligible for such sentence and who falls within the population targeted by the General Assembly for inclusion in community correction facilities or who is otherwise under the supervision of the Department of Community Correction;

(7) "Incarceration" means commitment to the Department of Correction;

(8) "Supervision" means direct supervision at varying levels of intensity by either probation officers, in the case of sentences to probation with a condition of community correction, or parole and post prison supervision officers, in the case of offenders eligible for release on parole or offenders transferred to community correction or community supervision from the Department of Correction;

(9) "Suspended imposition of sentence" means a procedure whereby a defendant who pleads or is found guilty of an offense is released by the court without pronouncement of sentence and without supervision.

(10)(A)(i) "Target group" means a group of offenders and offenses determined to be, but not limited to, theft, theft by receiving, hot checks, residential burglary, commercial burglary, failure to appear, fraudulent use of credit cards, criminal mischief, breaking or entering, drug paraphernalia, driving while intoxicated, fourth or subsequent offense, all other Class C or Class D felonies that are not either violent or sexual and that meet the eligibility criteria determined by the General Assembly to have significant impact on the use of correctional resources, Class A and Class B controlled substance felonies, and all other unclassified felonies for which the prescribed limitations on a sentence do not exceed the prescribed limitations for a Class C felony and that are not either violent or sexual.

(ii) Offenders committing solicitation, attempt, or conspiracy of the substantive offenses listed in subdivision (10)(A)(i) of this section are also included in the group.

(iii) For the purposes of this subdivision (10)(A), "violent or sexual" includes all offenses against the person codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-301 et seq., and § 5-14-101 et seq., and any offense containing as an element of the offense the use of physical force, the threatened use of serious physical force, the infliction of physical harm, or the creation of a substantial risk of serious physical harm.

(iv) For the purpose of an expungement or a sealing of a record under § 16-93-1207, "target group" includes any misdemeanor conviction except a misdemeanor conviction for which the offender is required to register as a sex offender or a misdemeanor conviction for driving while intoxicated.

(B) Offenders and offenses falling within the target group population may access community correction facilities pursuant to § 16-93-1206 [repealed] or § 16-93-1208;

(11) "Transfer" means an administrative condition permitting transfer of eligible offenders sentenced to traditional state correctional facilities to community correction facilities, programming, and community supervision, provided that only target offenders are eligible for the facilities;

(12)(A) "Transfer date" means the earliest date on which an offender is eligible for transfer from the Department of Correction to the Department of Community Correction.

(B) The date may be extended based on disciplinary behavior while under the custody of the Department of Correction; and

(13) "Trial court" means any court of this state having jurisdiction of an eligible offender and the power to sentence the eligible offender to the included options.

History. Acts 1993, No. 531, § 3; 1993, No. 548, § 3; 1995, No. 577, § 1; 1997, No. 279, § 1; 1997, No. 945, § 2; 2001, No. 1255, § 1; 2003, No. 245, § 1; 2003, No. 1018, § 1; 2005, No. 1994, § 287; 2007, No. 744, § 3.

A.C.R.C. Notes. Section 16-93-1206 referred to in subdivision (10)(B) of this section was repealed by Acts 2011, No. 570, § 107.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

16-93-1202. Definitions. [Effective January 1, 2014.]

As used in this subchapter:

(1) "Board" means the Board of Corrections;

(2) "Community correction" means:

(A) Probation, a judicially imposed criminal sanction permitting varying levels of supervision of eligible offenders in the community;

(B) Economic sanctions programs, including an active organized collection of fees, fines, restitution, day fines, day reporting centers, and penalties attached for nonpayment of fines;

(C) Home detention programs, ranging from curfew programs to house arrest with and without electronic monitoring;

(D) Community service programs, including both supervised and unsupervised work assignments and projects such that offenders provide substantial labor benefit to the community;

(E) Work-release programs, including residential and nonresidential forms of labor, with salary, in the community;

(F) Restitution programs, an organized collection and dissemination of restitution by a designated entity within the community punishment range of services, including, when necessary, the use of restitution centers such that the offender is held accountable and the victim receives restitution ordered by the court in a timely fashion;

(G)(i) Community correction facilities, multipurpose facilities encompassing security, punishment, and services such that offenders

can be housed therein when necessary but can also be assigned to or access correction programs and services which are housed there.

(ii) Included therein are revocation centers, restitution centers, work-release centers, and community correction centers;

(H) Boot camps, highly regimented programs encompassing strict discipline, education, treatment, and counseling designed to have the greatest positive impact on the offender in the shortest period of time;

(I) Drug and alcohol treatment services, including both inpatient and outpatient drug and alcohol abuse treatment and counseling provided by qualified community correction service provider programs for correctional clients;

(J) Educational programs, including programs focused on the acquisition of basic learning skills, general educational developmental preparation, literacy training, and other applicable areas of education that are of value to correctional clients;

(K) Vocational programs, focused on the learning of a marketable skill by correctional clients utilizing qualified vocational and technical community correction service provider programs whenever possible;

(L) Job skills programs, focused on the acquisition of basic job skills, especially those related to how to get a job and how to keep a job;

(M) Mental health treatment services, including both inpatient and outpatient mental health, family, and psychological counseling and treatment provided by qualified community correction service provider programs for correctional clients;

(N) Parole, an administrative condition permitting state supervision of eligible offenders sentenced to state correctional facilities and released therefrom to community correction programs or supervision;

(O) Post prison supervision, an administrative condition permitting state supervision of offenders sentenced to state correctional facilities and transferred from there to community correction programs or community supervision; and

(P) Pretrial programs, including the supervision and monitoring of certain defendants while awaiting sentencing or disposition by a court;

(3) "Community correction service provider program" means a public or private organization which provides treatment, guidance, training, support, or other rehabilitative services to individual offenders, offender groups, and their families in such areas as health, education, vocational training, special education, social services, psychological counseling, alcohol and drug treatment, and other applicable correctional concerns;

(4) "Department of Community Correction" means the administrative structure in place to oversee the development and operation of community correction facilities, programs, and services, including probation and parole supervision;

(5) "Department of Correction" means the administrative structure in place to oversee the daily operation of secure prison facilities;

(6) "Eligibility" or "eligible offender" means any person convicted of a felony who is by law eligible for such sentence and who falls within the

population targeted by the General Assembly for inclusion in community correction facilities or who is otherwise under the supervision of the Department of Community Correction;

(7) "Incarceration" means commitment to the Department of Correction;

(8) "Supervision" means direct supervision at varying levels of intensity by either probation officers, in the case of sentences to probation with a condition of community correction, or parole and post prison supervision officers, in the case of offenders eligible for release on parole or offenders transferred to community correction or community supervision from the Department of Correction;

(9) "Suspended imposition of sentence" means a procedure whereby a defendant who pleads or is found guilty of an offense is released by the court without pronouncement of sentence and without supervision.

(10)(A)(i) "Target group" means a group of offenders and offenses determined to be, but not limited to, theft, theft by receiving, hot checks, residential burglary, commercial burglary, failure to appear, fraudulent use of credit cards, criminal mischief, breaking or entering, drug paraphernalia, driving while intoxicated, fourth or subsequent offense, all other Class C or Class D felonies that are not either violent or sexual and that meet the eligibility criteria determined by the General Assembly to have significant impact on the use of correctional resources, Class A and Class B controlled substance felonies, and all other unclassified felonies for which the prescribed limitations on a sentence do not exceed the prescribed limitations for a Class C felony and that are not either violent or sexual.

(ii) Offenders committing solicitation, attempt, or conspiracy of the substantive offenses listed in subdivision (10)(A)(i) of this section are also included in the group.

(iii) As used in this subdivision (10)(A), "violent or sexual" includes all offenses against the person codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-301 et seq., and § 5-14-101 et seq., and any offense containing as an element of the offense the use of physical force, the threatened use of serious physical force, the infliction of physical harm, or the creation of a substantial risk of serious physical harm.

(iv) For the purpose of the sealing of a criminal record under § 16-93-1207, "target group" includes any misdemeanor conviction except a misdemeanor conviction for which the offender is required to register as a sex offender or a misdemeanor conviction for driving while intoxicated.

(B) Offenders and offenses falling within the target group population may access community correction facilities pursuant to § 16-93-1208;

(11) "Transfer" means an administrative condition permitting transfer of eligible offenders sentenced to traditional state correctional facilities to community correction facilities, programming, and community supervision, provided that only target offenders are eligible for the facilities;

(12)(A) "Transfer date" means the earliest date on which an offender is eligible for transfer from the Department of Correction to the Department of Community Correction.

(B) The date may be extended based on disciplinary behavior while under the custody of the Department of Correction; and

(13) "Trial court" means any court of this state having jurisdiction of an eligible offender and the power to sentence the eligible offender to the included options.

History. Acts 1993, No. 531, § 3; 1993, No. 548, § 3; 1995, No. 577, § 1; 1997, No. 279, § 1; 1997, No. 945, § 2; 2001, No. 1255, § 1; 2003, No. 245, § 1; 2003, No. 1018, § 1; 2005, No. 1994, § 287; 2007, No. 744, § 3; 2013, No. 1460, § 14.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment substituted "As used in" for "For the purpose" in (10)(a)(iii); substituted "the sealing of a criminal" for "an expungement or a sealing of a" in (10)(A)(iv); and deleted "§ 16-93-1206 or" following "pursuant to" in (10)(B).

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-1206. [Repealed.]

Publisher's Notes. This section, concerning sentencing alternatives, was repealed by Acts 2011, No. 570, § 107. The section was derived from Acts 1993, No. 531, § 6; 1993, No. 548, § 6; 1995, No. 1170, § 1; 1999, No. 485, § 1; 2005, No. 1994, § 287.

16-93-1207. Order of court. [Effective until January 1, 2014.]

(a) Upon the sentencing or placing on probation of any person under the provisions of this subchapter, the sentencing court shall issue an order or commitment, whichever is appropriate, in writing, setting forth the following:

(1) That the offender is being:

(A) Committed to the Department of Correction;

(B) Committed to the Department of Correction with judicial transfer to the Department of Community Correction;

(C) Placed on suspended imposition of sentence;

(D) Placed on probation under the provisions of this subchapter; or

(E) Committed to a county jail for a misdemeanor offense committed after January 1, 2007;

(2) That the offender has knowledge and understanding of the consequences of the sentence or placement on probation and violations thereof;

(3) A designation of sentence or supervision length along with community correction program distinctions of that sentence or supervision length;

(4) Any applicable terms and conditions of the sentence or probation term; and

(5) Presentence investigation or sentencing information, including, but not limited to, criminal history elements and other appropriate or necessary information for correctional use.

(b)(1) Upon the successful completion of probation or a commitment to the Department of Correction with judicial transfer to the Department of Community Correction or a commitment to a county jail for one (1) of the offenses targeted by the General Assembly for community correction placement, the court may direct that the record of the offender be expunged of the offense of which the offender was either convicted or placed on probation under the condition that the offender has no more than one (1) previous felony conviction and that the previous felony was other than a conviction for:

(A) A capital offense;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) First degree rape, § 5-14-103;

(E) Kidnapping, § 5-11-102;

(F) Aggravated robbery, § 5-12-103; or

(G) Delivering controlled substances to a minor as prohibited in § 5-64-410 [repealed].

(2) The fact that a prior felony conviction has been previously expunged shall not prevent its counting as a prior conviction for the purposes of this subsection.

(3) The procedure, effect, and definition of "expungement" for the purposes of this subsection shall be in accordance with that established in § 16-90-901 et seq.

History. Acts 1993, No. 531, § 7; 1993, No. 548, § 7; 1995, No. 998, § 10; 2005, No. 1994, § 477; 2007, No. 744, § 4.

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

CASE NOTES

Analysis

Construction.
Advisory Opinion.

Construction.

In a case in which appellant challenged the denial of his petition to seal the record in his 1997 theft-of-property case, the Supreme Court declined to engage in an interpretation of the 1997 version of this section, where appellant failed to object below to the application of the 2011 version and failed to raise any arguments on appeal in relation to the 1997 version. Sullivan v. State, 2012 Ark. 178, — S.W.3d — (2012).

Advisory Opinion.

In a case in which appellant challenged the denial of his petition to seal the record in his 1997 theft-of-property case, the Supreme Court declined to address the arguments that were raised by appellant in relation to the 2011 version of this section, because to do so would be to issue an advisory opinion on a version of the statute that had no application to the instant case. Sullivan v. State, 2012 Ark. 178, — S.W.3d — (2012).

16-93-1207. Order of court. [Effective January 1, 2014.]

(a) Upon the sentencing or placing on probation of any person under the provisions of this subchapter, the sentencing court shall issue an order or commitment, whichever is appropriate, in writing, setting forth the following:

(1) That the offender is being:

(A) Committed to the Department of Correction;

(B) Committed to the Department of Correction with judicial transfer to the Department of Community Correction;

(C) Placed on suspended imposition of sentence;

(D) Placed on probation under the provisions of this subchapter; or

(E) Committed to a county jail for a misdemeanor offense committed after January 1, 2007;

(2) That the offender has knowledge and understanding of the consequences of the sentence or placement on probation and violations thereof;

(3) A designation of sentence or supervision length along with community correction program distinctions of that sentence or supervision length;

(4) Any applicable terms and conditions of the sentence or probation term; and

(5) Presentence investigation or sentencing information, including, but not limited to, criminal history elements and other appropriate or necessary information for correctional use.

(b)(1) Upon the successful completion of probation or a commitment to the Department of Correction with judicial transfer to the Department of Community Correction or a commitment to a county jail for one (1) of the offenses targeted by the General Assembly for community correction placement, the court may direct that the record of the offender be sealed with regards to the offense of which the offender was either convicted or placed on probation under the condition that the offender has no more than one (1) previous felony conviction and that the previous felony was other than a conviction for:

(A) A capital offense;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) Rape, § 5-14-103;

(E) Kidnapping, § 5-11-102;

(F) Aggravated robbery, § 5-12-103; or

(G) Delivering controlled substances to a minor as prohibited in the former § 5-64-410.

(2) The fact that a prior felony conviction has been previously sealed shall not prevent its counting as a prior conviction for the purposes of this subsection.

(3) The procedure, effect, and definition of "sealed" for the purposes of this subsection shall be in accordance with that established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

History. Acts 1993, No. 531, § 7; 1993, No. 548, § 7; 1995, No. 998, § 10; 2005, No. 1994, § 477; 2007, No. 744, § 4; 2013, No. 1460, § 15.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment substituted "sealed with regards to the offense of" for "expunged of the offense of"

in (b)(1); substituted "Rape" for "First-degree rape" in (b)(1)(D); inserted "the former" in (b)(1)(G); substituted "sealed" for "expunged" in (b)(2); and in (b)(3), substituted "sealed" for "expungement" and "the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401" for "§ 16-90-901."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-93-1208. Post commitment transfer.

RESEARCH REFERENCES

Ark. L. Rev. Note, Hurricane Blakely and the Calm After the Storm Found in Booker, 58 Ark. L. Rev. 449.

Subchapter 13 — Criteria for Transfer to Community Punishment Programs

SECTION.
16-93-1301 — 16-93-1304. [Repealed.]

16-93-1301 — 16-93-1304. [Repealed.]

Publisher's Notes. This subchapter, concerning criteria for transfer to community punishment programs, was repealed by Acts 2011, No. 570, § 108. The subchapter was derived from the following sources:

16-93-1301. Acts 1993, No. 534, § 1; 1993, No. 555, § 1; 1994 (1st Ex. Sess.), No. 8, § 2; 1994 (1st Ex. Sess.), No. 9, § 2; 1994 (2nd Ex. Sess.), No. 19, § 1; 1995, No. 1170, § 3; 1997, No. 945, § 3; 2001, No. 904, § 1; 2005, No. 1994, § 478; 2007, No. 592, § 1.

16-93-1302. Acts 1993, No. 534, § 2; 1993, No. 555, § 2; 1995, No. 1009, § 2; 1995, No. 1011, § 2; 2005, No. 1994, § 289.

16-93-1303. Acts 1993, No. 534, § 3; 1993, No. 555, § 3.

16-93-1304. Acts 1993, No. 534, § 4; 1993, No. 555, § 4; 1995, No. 1170, § 4.

The amendment by Acts 2011, No. 180, § 1, to § 16-93-1302(f) was superseded by the repeal by Acts 2011, No. 570, § 108. This section would read as follows:

"16-93-1302. **Transfer procedures.**

"(a)(1)(A) Inmates under sentence for all felonies except those listed in subsection (b) of this section will be transferred from the Department of Correction to the Department of Community Correction subject to rules and regulations promulgated by the Board of Corrections and conditions set by the Parole Board.

"(B) This review may be conducted without a hearing when the inmate has not received a major disciplinary report against him or her which resulted in the loss of good time, there has not been a request by a victim to have input on transfer conditions, and there is no indication in the risk/needs assessment review that special conditions need to be placed on the inmate.

"(2)(A) When one (1) or more of the circumstances in subdivision (a)(1) of this section are present, the Parole Board shall conduct a hearing to determine the appropriateness of the inmate for transfer.

"(B) The Parole Board has two (2) options:

"(i) To transfer the individual to the Department of Community Correction accompanied by conditions of the transfer, including, but not limited to, supervision levels, programming requirements, and facility placement when appropriate; or

"(ii) To deny transfer based on a set of established criteria and to accompany the denial with a course of action to be undertaken by the inmate to rectify the Parole Board concerns.

"(C) Upon completion of the course of action determined by the Parole Board, after final review of the inmate's file to ensure successful completion, the Parole Board shall authorize the inmate's trans-

fer to the Department of Community Correction in accordance with administrative policies and procedures governing the transfer and subject to conditions attached to the transfer.

"(3) Should an inmate fail to fulfill the course of action outlined by the Parole Board to facilitate transfer to community correction, it shall be the responsibility of the inmate to petition the Parole Board for rehearing.

"(b)(1) Inmates under sentence for the following Class Y felonies shall be eligible for discretionary transfer to the Department of Community Correction by the Parole Board after having served the time required as set by the Arkansas Sentencing Commission with credit for meritorious good time:

"(A) Murder in the first degree, § 5-10-102;

"(B) Kidnapping, § 5-11-102;

"(C) Rape, § 5-14-103;

"(D) Aggravated robbery, § 5-12-103;

"(E) Causing a catastrophe, § 5-38-202(a);

"(F) Engaging in a continuing criminal enterprise, § 5-64-405; and

"(G) The manufacture or delivery of a schedule I or schedule II controlled substance which by aggregate weight including adulterants or diluents is greater than twenty-eight grams (28 g), § 5-64-401(a)(1).

"(2)(A) Review of inmates convicted of the enumerated offenses in subdivision (b)(1) of this section shall be based upon policies and procedures adopted by the Parole Board for the review.

"(B) The policies and procedures shall include provision for notification of victims, that a hearing shall be held and records kept of such proceedings, and that there be a listing of the criteria upon which a denial may be based.

"(3) All transfers of offenders specified in this subsection shall be issued upon order, duly adopted, of the Parole Board in accord with such policies and procedures.

"(c)(1) The course of action required by the Parole Board shall not be outside the current resources of the Department of Correction nor the conditions set be outside the current resources of the Department of Community Correction.

"(2) However, the departments shall strive to accommodate the actions required by the Board of Corrections to the best of their ability.

"(d) Transfer is not an award of clemency and it shall not be considered as a reduction of sentence or a pardon.

"(e) Every inmate while on transfer status shall remain in the legal custody of the Department of Correction, under the supervision of the Department of Community Correction, and subject to the orders of the Parole Board.

"(f) An inmate who has met all of the criteria for release and who has a release eligibility date that falls on a weekend or holiday may be released on the last business day before his or her release eligibility date.

"(g) An inmate who is sentenced under the provisions 28 of § 5-4-501(c) or (d) for a serious violent felony or a felony involving violence may be considered eligible for parole or for community correction transfer upon reaching regular parole or transfer eligibility, but only after reaching a minimum age of fifty-five (55) years.

Subchapter 15 — Parole — Sentence Served in County Jail

SECTION.

16-93-1501, 16-93-1502. [Repealed.]

Publisher's Notes. This subchapter, concerning parole — sentence served in county jail, was repealed by Acts 2011, No. 570, § 109. The subchapter was derived from the following sources:

16-93-1501. Acts 2003, No. 1394, § 1.

16-93-1502. Acts 2003, No. 1394, § 2.

Subchapter 16 — Transitional Housing Facilities

A.C.R.C. Notes. Acts 2007, No. 1286, § 15, provided: "TRANSITIONAL HOUSING PROGRAM FUNDING REQUIREMENTS. A minimum of one million five hundred thousand ($1,500,000) dollars each fiscal year shall be expended for Transitional Housing costs associated with inmate and/or parolee placement. In the event that a minimum of one million five hundred thousand ($1,500,000) dollars can not be expended each fiscal year for Transitional Housing Program costs, the Director of the Department of Community Correction shall notify and seek approval by the Arkansas Legislative Council or Joint Budget Committee."

16-93-1603. Powers and duties of the Board of Corrections.

(a) The Board of Corrections shall promulgate rules that shall set minimum standards for all transitional housing facilities in the State of Arkansas.

(b)(1) The Parole Board, a district court, or a circuit court shall not release a transferee, parolee, or probationer to a transitional housing facility as a resident unless the transitional housing facility provides a copy of a current license issued by the Department of Community Correction under § 16-93-1604.

(2) The transitional housing facility shall comply with all the standards set by the rules established by the Board of Corrections under subsection (a) of this section.

(c) The rules described in subsection (a) of this section shall include at least the following:

(1) Compliance with any local health and safety codes, including housing codes, fire codes, plumbing codes, and electrical codes, set by the jurisdiction or jurisdictions in which the transitional housing facility is located;

(2) Compliance with any local zoning ordinances;

(3) Compliance with any state and federal health and safety codes;

(4) Consideration of geographic dispersement of transitional housing facilities;

(5) Allowable ratio of transitional housing facility square footage to residents; and

(6) Allowable ratio of bathing facilities and restroom facilities to residents.

(d)(1) The rules described in subsection (a) of this section shall be promulgated on or before January 1, 2006.

(2) The Board of Corrections may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2005, No. 1378, § 2; 2009, No. 615, § 1.

Amendments. The 2009 amendment rewrote (b), which read: "All of the standards set by the rules described in subsection (a) of this section shall be established prior to the Parole Board's or a district or circuit court's releasing a transferee, parolee, or probationer to a transitional housing facility as a resident."

CASE NOTES

No Waiver of Sovereign Immunity.

Arkansas Department of Community Correction (DCC) was entitled to sovereign immunity from the city action's to enjoin it from changing the use of a portion of its facility under Ark. Const. Art. 5, § 20 because a judgment against the DCC would operate to control the action of the State as it would allow the city to direct how the DCC used its property. The court further held that this section did not contain either an express or an implied waiver of sovereign immunity because nothing in the statutory scheme indicated a legislative intent to waive sovereign immunity. Ark. Dep't of Cmty. Corr. v. City of Pine Bluff, 2013 Ark. 36, — S.W.3d — (2013).

16-93-1604. Powers and duties of the Department of Community Correction.

(a) The Department of Community Correction shall implement the rules described in § 16-93-1603 on or before July 1, 2006.

(b)(1) The department shall be responsible for the enforcement of the rules established by the Board of Corrections under § 16-93-1603.

(2) The department shall establish all procedures and forms that it deems necessary to implement the rules, and the procedures shall include, but not be limited to, the following:

(A) Creating a state-issued Arkansas transitional housing facility license for applicant facilities that have met the standards established by the rules of the board;

(B) Establishing the process to be followed by an applicant in making application to the department to receive a license to operate an approved transitional housing facility, which shall include a reasonable application fee to be established by the board;

(C) Establishing procedures for the department to accept applications for facilities wishing to obtain a license to operate a transitional housing facility and to investigate whether applicants meet the standards established by the rules of the board;

(D)(i) Establishing procedures for the department to notify an applicant when its application has been approved or denied.

(ii) All denials shall specify in writing the reason for the application's denial;

(E) Establishing procedures to investigate complaints that a licensed transitional housing facility is in violation of the standards established by the rules of the board;

(F) Establishing procedures for the department to suspend or revoke a license when a license holder is no longer in compliance with or violates the rules of the board; and

(G) Establishing procedures for the department to impose civil penalties for the operation of a transitional housing facility without a valid license issued by the department.

(c) The Director of the Department of Community Correction and the staff of the department shall provide administrative support to the board.

History. Acts 2005, No. 1378, § 2; 2009, No. 615, § 2.

Amendments. The 2009 amendment inserted (b)(2)(G) and made related changes.

16-93-1605. License required.

(a) In order to operate a transitional housing facility for criminal offenders who have been transferred, paroled, or placed on probation through the Arkansas criminal justice system, the operator shall obtain a license from the Department of Community Correction.

(b)(1) Operation of a transitional housing facility without a license issued by the department shall result in the imposition of civil penalties against the operator by the department.

(2) Civil penalties for operation of a transitional housing facility without a valid license shall not exceed five hundred dollars ($500) per day for each day the violation continues.

(3) However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

(c) A criminal offender who has been transferred, paroled, or placed on probation through the Arkansas criminal justice system shall not be sent via court order to a transitional housing facility that is not properly licensed by the department.

History. Acts 2009, No. 615, § 3.

Subchapter 17 — Swift and Certain Accountability on Probation Pilot Program

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A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

16-93-1701. Establishment.

The Administrative Office of the Courts shall:

(1) Create the Swift and Certain Accountability on Probation Pilot Program, awarding up to five (5) grants in the program's first year to counties or judicial districts requesting funds to establish probation programs to be administered by the Department of Community Correction designed to reduce recidivism by requiring swift, certain, and graduated sanctions for probationers in noncompliance;

(2) Possess the discretion to determine the appropriate number of grants based on the amount of money allocated for the grant program and the capacity of the applicants based on submitted proposals to successfully implement and evaluate the program;

(3) Ensure that grants awarded under this subchapter are awarded in a manner that promotes the strongest proposals and evaluation designs that have the broadest impact and that are evenly geographically distributed; and

(4) Employ a person who shall have as one-half (½) of his or her designated job duties the management of the program established under this subchapter.

History. Acts 2011, No. 570, § 110.

16-93-1702. Application.

(a) A county or judicial district may apply for a grant award under this subchapter by submitting a written application to the Administrative Office of the Courts.

(b) The application shall include the following:

(1) A description of the proposed probation program and the need in the county or judicial district for the establishment of a probation program under this subchapter;

(2) A description of the long-term strategy and a detailed plan of implementation, including how the county or judicial district intends to pay for the probation program after the grant funding is exhausted;

(3) A certification that all government or private entities that would be affected by the proposed probation program have been appropriately consulted regarding the development of the probation program;

(4) A description of the coordination plan involving all government or private entities in the implementation process;

(5) Identification of the governmental and judicial partners in the proposed probation program, including the chief judge of the circuit court as well as other participating judges in the applicable jurisdiction, the court administrator, the probation administrator, the county sheriff, the prosecuting attorney, the public defender, applicable private defense attorneys, applicable municipal law enforcement administrators, and applicable treatment provider administrators; and

(6) A description of how and assurances that the applicant will collect key process measures, including the:

(A) Number of probationers enrolled in the probation program;

(B) Frequency of drug testing probationers;

(C) Positive drug test rate and other rates of noncompliance with the measurable conditions of supervision;

(D) Kinds of sanctions available for a violation of probation;

(E) Kinds of rewards available for positive behavior;

(F) Certainty of the application of an appropriate sanction;

(G) Average period of time from detection of a violation to issuance of a sanction for the violation;

(H) Severity of the sanction; and

(I) Time between the completion of the sanction and a subsequent violation, if any.

History. Acts 2011, No. 570, § 110.

16-93-1703. Grant uses.

(a) A grant awarded under this subchapter shall be used by the grantee to establish probation programs that:

(1) Identify probationers for enrollment in the probation program, through, among other tools, a validated risk-needs assessment tool, who are:

(A) Serving a term of probation;

(B) At high risk of failing to observe the conditions of supervision; and

(C) At high risk of being returned to incarceration as a result of that failure;

(2) Notify probationers of the rules of the probation program, and consequences for violating those rules;

(3) Monitor probationers for illicit drug use with regular and rapid-result drug screening;

(4) Monitor probationers for violations of other rules and probation terms, including failure to pay court-ordered financial obligations such as child support or victim restitution;

(5) Respond to violations of those rules with immediate arrest of the violating probationer and swift and certain modification of the conditions of probation, including imposition of short jail stays;

(6) Immediately respond to probationers who have absconded from supervision with service of bench warrants and immediate sanctions;

(7)(A) Provide rewards to probationers who comply with those rules.

(B) Rewards shall include without limitation:

(i) Reduced reporting requirements;

(ii) Less frequent drug testing;

(iii) Certificates of achievement;

(iv) Other rewards as determined by the locality; and

(v) Early termination of the sentence;

(8) Ensure funding for and referral to substance abuse treatment for probationers who repeatedly fail to refrain from illicit drug use;

(9) Establish procedures to terminate probation program participation by and initiate revocation to a term of incarceration for probation-

ers who habitually fail to abide by probation program rules and pose a threat to public safety; and

(10) Include regular coordination meetings for key partners of the probation program, including the partners identified under § 16-93-1702(b)(5).

(b) As used in this section, "validated risk-needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior.

History. Acts 2011, No. 570, § 110.

16-93-1704. Determination of probation program savings.

(a) Each county or judicial district receiving a grant under this subchapter shall:

(1) Not later than twelve (12) months after an initial grant award under this section and annually thereafter through the end of the grant period calculate the amount of cost savings and costs averted, if any, resulting from the reduced incarceration achieved through the grant program; and

(2) Report to the Administrative Office of the Courts:

(A) The amount calculated under subdivision (a)(1) of this section; and

(B) The portion of the amount, if any, that will be reinvested for expansion of the Swift and Certain Accountability on Probation Pilot Program.

(b) The Administrative Office of the Courts shall:

(1) Annually evaluate:

(A) The methods used by courts to calculate the cost savings reported under subdivision (a)(1) of this section; and

(B) The use of the savings by the courts to reinvest for expansion of the Swift and Certain Accountability on Probation Pilot Program; and

(2) Provide guidance, assistance, and recommendations to such courts relating to the potential reinvestment of such savings for expansion of the Swift and Certain Accountability on Probation Pilot Program.

(c) The Administrative Office of the Courts shall select an entity to serve as the Swift and Certain Accountability on Probation Pilot Program initiative evaluation coordinator to:

(1) Analyze and provide feedback on the measures and outcomes the individual program initiative programs are required to collect and conduct, respectively, in accordance with § 16-93-1702(b)(6);

(2) Ensure consistent tracking of the progress of the demonstration programs carried out under this section, including such measures and outcomes; and

(3) Ensure that the aggregate data from all such programs is available to each of the programs and to the Administrative Office of the Courts.

(d) The Administrative Office of the Courts shall report annually to the General Assembly and the Governor the results of the Swift and Certain Accountability on Probation Pilot Program initiative carried out under this subchapter.

History. Acts 2011, No. 570, § 110.

CHAPTER 94

EXTRADITION

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

16-94-104. Extradition for theft of certain property.

The Governor may request the extradition of a person charged with theft of property if the person committed the theft of property by:

(1) Being subject to the Packers and Stockyards Act, 1921, 7 U.S.C. § 181 et seq., as it existed on January 1, 2013;

(2) Obtaining livestock from a commission merchant by representing that the person will make prompt payment; and

(3) Failing to make payment in accordance with 7 U.S.C. § 228b, as it existed on January 1, 2013.

History. Acts 2013, No. 498, § 1.

Subchapter 2 — Uniform Criminal Extradition Act

16-94-216. Bail.

RESEARCH REFERENCES

ALR. Allowance of Bail in International Extradition Proceedings. 60 A.L.R. Fed. 2d 203.

CHAPTER 95

INTERSTATE AGREEMENT ON DETAINERS

16-95-101. Agreement on Detainers.

RESEARCH REFERENCES

ALR. Construction and Application of Article IV of Interstate Agreement on Detainers (IAD): Issues Related to "Speedy Trial" Requirement, and Construction of Essential Terms. 51 A.L.R.6th 1.

Construction and Application of Article IV of Interstate Agreement on Detainers (IAD): Issues Related to "Anti-Shuttling" Provision, Dismissal of Action Against Detainee, and Adequacy of Certificate. 52 A.L.R.6th 1.

Construction and Application of Article IV of Interstate Agreement on Detainers (IAD): Issues Related to Custody, Temporary Custody, Contest as to Legality of Custody, Necessity of Hearing, and Transmittal Orders. 53 A.L.R.6th 1.

Construction and Application of Article III of Interstate Agreement on Detainers (IAD) — Issues Related to "Speedy Trial" Requirement, and Construction of Essential Terms. 70 A.L.R.6th 361.

Construction and Application of Article III of Interstate Agreement on Detainers (IAD): Issues Related to Certificate, Request by Defendant for Disposition, and "Anti-Shuttling" Provision. 71 A.L.R.6th 335.

Construction and Application of Article III of Interstate Agreement on Detainers (IAD): Issues Related To Custody, Duties of Prison Officials, Waiver of Extradition, Escape, Assistance of Counsel, and Necessity of Hearing. 72 A.L.R.6th 141.

CASE NOTES

Dismissal of Charges.

On appeal of defendant's conviction for aggravated robbery and theft, he did not show that the State failed to follow proper extradition procedures under art. IV(e) of this section as the record did not indicate that he was sent to Arkansas before the extradition process and then returned to Mississippi only to be sent back to Arkansas. Thus, he was not entitled to dismissal of the criminal information. Spearman v. State, 2013 Ark. 196, — S.W.3d — (2013).

CHAPTER 96

PROCEEDINGS IN INFERIOR COURTS

SUBCHAPTER.

4. Fines, Penalties, and Forfeitures.

Subchapter 4 — Fines, Penalties, and Forfeitures

SECTION.

16-96-403. Imposition by circuit court on appeal — Costs.

16-96-403. Imposition by circuit court on appeal — Costs.

The fines, penalties, forfeitures, and costs imposed by a circuit court for offenses which are misdemeanors or violations under state law or local ordinance or for traffic offenses which are misdemeanors or violations under state law or local ordinance in cases appealed from a

court of limited jurisdiction shall be collected and disbursed in the following manner:

(1) If the appeal proceeds to a de novo bench trial or jury trial, the fines, penalties, forfeitures, and costs imposed by the circuit court shall be collected under § 16-13-709 and paid to the county treasurer;

(2)(A) If the defendant pleads guilty or nolo contendere or the circuit court dismisses the appeal, including dismissals under Arkansas Rules of Criminal Procedure 36(h), the judgment of the court from which the appeal originated shall be affirmed.

(B)(i) The circuit court clerk shall notify in writing, within thirty (30) days of the affirmance or dismissal, the court from which the appeal originated of the affirmance or dismissal and shall return any bond or other security which has been transmitted to the circuit court.

(ii) Upon receipt of the notice of affirmance or dismissal and the bond or other security, the court from which the appeal originated shall collect and disburse the fines, penalties, forfeitures, and costs under §§ 16-10-209, 16-10-308, 16-17-707, 14-44-108, and 14-45-106; and

(3) Nothing in this section shall affect the right of a court of limited jurisdiction to require the defendant to post a bond or other security to guarantee the appearance of the defendant before the circuit court nor the ability of these courts to collect any fine, penalty, forfeiture, or costs imposed in the absence of the bond or other security.

History. Acts 1933, No. 148, § 1; Pope's Dig., § 11826; A.S.A. 1947, § 44-410; Acts 1995, No. 1252, § 1; 1997, No. 788, § 24; 1997, No. 1341, § 24; 1999, No. 1081, § 9; 2003, No. 1185, § 220; 2003, No. 1765, § 25; 2009, No. 633, § 17.

Amendments. The 2009 amendment subdivided (2), inserted "including dismissals under Arkansas Rules of Criminal Procedure 36(h)" in (2)(A), inserted "and shall return any bond or other security which has been transmitted to the circuit court" in (2)(B)(i), and inserted "and the bond or other security" in (2)(B)(ii); in (3), substituted "the defendant to post a bond or other security to guarantee the appearance of the defendant before the" for "a supersedeas bond for an appeal to" and substituted "the bond or other security" for "a supersedeas bond"; and made related and minor stylistic changes.

Subchapter 5 — Appeals to Circuit Court

16-96-508. Judgment on default.

CASE NOTES

Dismissal Improper.

Dismissal of defendant's appeal of his conviction in the city court was improper as this section did not apply where defendant only failed to show up to a pre-trial hearing, and the dismissal would waive defendant's right to a jury trial, which he did not waive. Ayala v. State, 365 Ark. 192, 226 S.W.3d 766 (2006).

Circuit court abused its discretion in dismissing defendant's appeal pursuant to this section where it based the dismissal on his initial failure to appear, recalled the case the same day, defendant was present when the case was recalled, and the court indicated that it was having a trial that same day. Lampkin v. State, 101 Ark. App. 275, 275 S.W.3d 679 (2008).

CHAPTER 97
SENTENCING

16-97-101. Bifurcated sentencing procedures.

CASE NOTES

Analysis

Alternative Sentences.
Error Not Found.
Right of Confrontation.
Sentencing by Trial Court.

Alternative Sentences.

Trial court abused its discretion when it failed to allow a jury to consider alternative punishment after it convicted defendant of sexual assault in the first degree, rather than rape. Miller v. State, 97 Ark. App. 285, 248 S.W.3d 487 (2007).

Trial court did not abuse its discretion when if refused to give defendant's requested instruction on the alternative sentence of probation because the decision on jury instructions was within the scope of the trial court and had such an instruction been given it was unlikely that the jury would have recommended probation, as it recommended consecutive twenty-five year terms, event though the minimum term was ten years. Benjamin v. State, 102 Ark. App. 309, 285 S.W.3d 264 (2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 561 (Oct. 23, 2008).

Because the permissive language of subdivision (4) of this section did not require a trial court to give an instruction on alternative sentencing, the trial court committed no error in declining defendant's request for an instruction recommending probation; even if the jury was so instructed, the trial court had the discretion to reject the jury's recommendation for probation, and the trial court did not believe that an alternative sentence was appropriate under the facts of the case. Stigger v. State, 2009 Ark. App. 596, — S.W.3d — (2009).

During defendant's trial for theft by receiving and theft of property, the court did not err under subdivision (4) of this section in refusing to give defendant's proffered jury instruction on the availability of probation as an alternative sentence because it gave the request for the instruction more than proper consideration; after previously completing a drug program, defendant had once again become involved with known felons. Malone v. State, 2012 Ark. App. 280, — S.W.3d — (2012).

Error Not Found.

While a trial court was authorized to instruct the jury on alternative sentences for which defendant might have qualified under subdivision (4) of this section, the statute was permissive and did not require the trial court to give such an instruction. The trial court's reasons for not offering the instruction based on the facts of defendant's case did not amount to an abuse of discretion. Suggs v. State, 2010 Ark. App. 571, 377 S.W.3d 461 (2010).

Right of Confrontation.

Right of confrontation guaranteed by U.S. Const. Amend. VI and Ark. Const. Art. II, § 10 extends to a defendant's sentencing proceeding before a jury. To the extent Wallace v. State, 2010 Ark. App. 706, 378 S.W.3d 269 (2010), conflicted with this holding, it was overruled. Vankirk v. State, 2011 Ark. 428, 385 S.W.3d 144 (2011).

Where defendant pled guilty to rape and elected to be sentenced by a jury in a bifurcated proceeding, the trial court erred in admitting a videotaped statement of the child rape victim during the sentencing proceeding, because this violated defendant's right of confrontation under U.S. Const. Amend. VI and Ark. Const. Art. II, § 10. Vankirk v. State, 2011 Ark. 428, 385 S.W.3d 144 (2011).

Sentencing by Trial Court.

In a case dealing with domestic offenses, although the jury was permitted to recommend an alternative sentence, the trial court had the discretion as to whether to impose it; thus, the trial court was permitted to accept a jury's recommended alternative sentences of proba-

tion and suspended sentences and then impose fines as a condition of those sentences, pursuant to § 5-4-303(c)(10). Sullivan v. State, 366 Ark. 183, 234 S.W.3d 285 (2006).

Trial court imposed an illegal sentence when it rejected a jury's verdict and took it upon itself to sentence defendant where the jury's sentencing verdict of zero years in prison and a fine of zero dollars was a proper and valid sentence for second-degree battery; the appellate court sentenced defendant to three years of probation in accordance with the jury's alternative verdict under Ark. Code Ann. § 16-97-101(4). Donaldson v. State, 370 Ark. 3, 257 S.W.3d 74 (2007).

Cited: Polivka v. State, 2010 Ark. 152, 362 S.W.3d 918 (2010).

16-97-102. Sentencing by the court.

CASE NOTES

Cited: Epps v. State, 100 Ark. App. 344, 268 S.W.3d 362 (2007).

16-97-103. Evidence.

CASE NOTES

Analysis

Applicability.
Admissibility.
Aggravating Circumstances.
Character Evidence.
Jury Instructions.
Victim Impact Evidence.

Applicability.

While evidence presented during the guilt phase of a trial was relevant to sentencing under subdivision (7) of this section, there was no merit to defendant's claim that having a different judge preside over the sentencing phase of trial meant that the evidence presented during the guilt phase would not be considered. Rasul v. State, 2013 Ark. App. 137, — S.W.3d — (2013).

Admissibility.

Trial court did not err by allowing two witnesses to testify during sentencing that they had seen defendant "acting suspiciously" in the neighborhood park on the day of his initial contact with police because the trial court specifically instructed the jury that the testimony was only to be considered to show why the witnesses called the police and was not offered for the truth of the matter asserted, the testimony was not unduly prejudicial, and the testimony went to defendant's character. Adkins v. State, 371 Ark. 159, 264 S.W.3d 523 (2007).

Trial court did not err by allowing a police officer to testify that defendant's pants were unbuttoned and unzipped at the time of his arrest because defendant cured any prejudice by cross-examining the officer and the appearance of defendant's clothing was relevant to why the officer searched defendant. Adkins v. State, 371 Ark. 159, 264 S.W.3d 523 (2007).

Trial court's decision to permit the introduction of evidence relating to defendant's criminal history during the sentencing phase of his trial was consistent with the mandates of this section; at sentencing, under § 5-4-401(a)(1), defendant was subjected to the normal ranges of Class A and Y felonies as opposed to the enhanced ranges designated for habitual offenders. Defendant actually received the minimum sentences allowed on two of his four convictions and less than the maximum on the other two and, under § 5-4-403, his sentences were ordered to run concurrently rather than consecutively, as they could have; thus, defendant not only failed to establish a threshold evidentiary error supporting reversal, but he also failed to show that he suffered prejudice during sentencing. Wilson v. State, 100 Ark. App. 14, 262 S.W.3d 628 (2007).

Upon defendant's conviction for rape and second-degree battery, he argued that the admission of evidence of his prior

alleged misconduct involving a minor during the sentencing phase of trial violated his rights under the Confrontation Clause; however, the error was not preserved for review. Pursuant to this section, certain evidence was admissible at sentencing that would not have been admissible at the guilt phase of a trial, and if defendant did not wish for this evidence to come in during sentencing, he should have raised an objection. White v. State, 2012 Ark. 221, — S.W.3d — (2012).

Court did not abuse its discretion by allowing into evidence the transcript of chats between defendant and the officer, whom defendant believed to be a 14-year old female, because the transcript was the best method for the court to gauge the veracity of defendant's attempts to downplay his activities and contained much relevant information not found in the agreed statement of facts; in this section, Arkansas Legislature listed several other types of evidence that could be considered, including evidence relevant to guilt presented at the first stage. Howerton v. State, 2012 Ark. App. 331, — S.W.3d — (2012).

In an aggravated robbery case, a trial court did not abuse its discretion by admitting evidence at sentencing of appellant's participation in a prior robbery; it was of no consequence that appellant had not yet been convicted in the robbery at issue. As to relevance, the fact that appellant was an active participant in two robberies, just days apart and committed in nearly the same fashion, was relevant character evidence and was evidence of aggravated circumstances showing his propensity to engage in similar criminal conduct. Thomas v. State, 2012 Ark. App. 466, — S.W.3d — (2012).

Aggravating Circumstances.

During the penalty phase of defendant's trial for driving while intoxicated in violation of § 5-65-103 and refusal to submit to a chemical test in violation of § 5-65-205, the trial court did not err by admitting evidence of his prior convictions for refusal to submit to a chemical test; the evidence was admissible under this section, as it was relevant to his sentencing as either character evidence or aggravating circumstances. Williams v. State, 2009 Ark. App. 554, — S.W.3d — (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 732 (Oct. 29, 2009).

Character Evidence.

After defendant was convicted of second-degree sexual assault, a woman was properly allowed to testify at the sentencing hearing that he had raped her nine years earlier, as other crime evidence that might not be admissible at the guilt phase under Ark. R. Evid. 404(b) was admissible at sentencing under subdivision (5) of this section as relevant evidence of defendant's character that the jury could consider in determining the appropriate sentence. McElroy v. State, 2011 Ark. App. 533, 385 S.W.3d 406 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 687 (Ark. Ct. App. Oct. 26, 2011).

Although the testimony of the three witnesses regarding prior incidents involving defendant did not involve kidnapping, given the similarities between the events, including missing underwear, deceptive tactics to gain entry into a witness's home, use of a latex glove, and his use of a pellet gun and his threat to attack another witness's husband, under Ark. R. Evid. 401 and subdivision (5) of this section, the trial court did not abuse its discretion in admitting the testimony at the sentencing phase of the trial. Huff v. State, 2012 Ark. 388, — S.W.3d — (2012).

Jury Instructions.

In an aggravated robbery case where habitual offender status was at issue, a trial court did not err by refusing to give the jury an instruction on the sentences that appellant had received in federal court for prior bank robbery convictions because it was within the trial court's discretion to do so, pursuant to subdivision (2) of this section. Walden v. State, 2012 Ark. App. 307, — S.W.3d — (2012).

Victim Impact Evidence.

As to the state's appeal regarding the defense's use of victim-impact evidence under this section, there was jurisdiction over the appeal because the application of statutory sentencing procedures required uniformity and consistency. However, the state's argument was not addressed because it was not preserved for review; the state's contemporaneous relevance objection did not encompass the arguments made on appeal. Jones v. State, 374 Ark. 475, 288 S.W.3d 633 (2008).

Testimony of the chairman of a nonprofit group's board about the group's re-

sponse to a flooding disaster, the resulting funerals, and the chairman's personal relationships with the bereaved was relevant victim-impact evidence under Ark. R. Evid. 402 and this section at defendant's sentencing hearing as although the group was able to meet the disaster victims' needs, the testimony illustrated the difficulties the group experienced due to defendant's theft; the evidence was not unduly prejudicial. Brown v. State, 2011 Ark. App. 608, — S.W.3d — (2011).

Cited: MacKool v. State, 365 Ark. 416, 231 S.W.3d 676 (2006); Bell v. State, 371 Ark. 375, 266 S.W.3d 696 (2007).

CHAPTER 98

TREATMENT FOR DRUG ABUSE

SUBCHAPTER.

Subchapter 2 — Pretrial or Posttrial Treatment, Intervention, and Diversion Programs

SECTION.

16-98-201. Qualifications — Waiver.

Any judicial district, with the agreement of the parties, may establish a program whereby a defendant may be transferred to a pretrial or posttrial treatment program for drug abuse, provided that:

(1) The treatment program is at least one (1) year in length and meets the minimum standards of treatment promulgated by the Division of Behavioral Health Services of the Department of Human Services;

(2) The charge or charges against the defendant carries a punishment which may be suspended;

(3) The defendant waives his or her rights to a speedy trial and such other rights as are agreed to by the parties and executes a consent for a limited release of confidential information regarding treatment permitting the judge, the prosecutor, and the defense attorney access to information relating to attendance, attitude, participation, and results of drug screens; and

(4)(A) The defendant is eighteen (18) years of age or older.

(B) This provision may be waived with the consent of the prosecuting attorney.

History. Acts 1994 (2nd Ex. Sess.), No. 53, § 1; 2013, No. 1107, § 14.

Amendments. The 2013 amendment, in (1), substituted "Division of Behavioral Health Services" for "Bureau of Alcohol and Drug Abuse Prevention" and deleted "Health and" following "the Department of."

CASE NOTES

Analysis

Illustrative Cases.
Probation Revocation.

Illustrative Cases.

Where appellant did not complete drug court in accordance with § 16-98-201, he was required to serve a six-year sentence for forgery and a ten-year suspended sentence for theft. Under § 5-4-404, he was entitled to 53 days credit for the time he spent in jail before he entered drug court; appellant was not entitled to credit for the time that his case was in drug court. Laxton v. State, 99 Ark. App. 1, 256 S.W.3d 518 (2007).

Probation Revocation.

Where defendant pleaded guilty to commercial burglary, breaking or entering, two counts of theft of property, and first-degree criminal mischief, he was sentenced to 60 months' supervised probation. Because defendant consented to going to the residential drug treatment in accordance with this section, his placement in a regional punishment facility could not be classified as a probation revocation; when he violated the terms of the drug-court program based on his public intoxication and testing positive for cocaine, the trial court did not err by revoking his probation. Doyle v. State, 2009 Ark. App. 94, 302 S.W.3d 607 (2009).

Subchapter 3 — Arkansas Drug Court Act

Effective Dates. Acts 2007, No. 1022, § 6: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is a critical need for judicial intervention and support for effective treatment programs that reduce the incidence of drug use, drug addiction, and family separation due to parental substance abuse and drug-related crimes; that this act expands drug court programs and creates the Drug Court Advisory Committee; and that this act is immediately necessary because any delay in the expansion of drug court programs or the creation of the Drug Court Advisory Committee will harm citizens of this state who will benefit from judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 5, § 2: Jan. 31, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Drug Court Advisory Committee provides valuable advice and review on issues involving drug courts; that the committee is missing the perspective of the Parole Board in this advice and review and that the addition of the Chair of the Parole Board or his or her designee will enhance the committee's performance of its duties; and that the new member added by this act should assume that position as soon as possible to

allow the committee to perform its duties in an effective manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is 28 overridden, the date the last house overrides the veto."

Acts 2013, No. 282, § 17: Mar. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

CASE NOTES

Revocation.

Defendant's drug-court probation under §§ 16-98-301 to 16-98-304 was revoked for failing to attend drug testing, failing to attend a group meeting, and being arrested because she inexcusably failed to comply under § 5-4-309(d), despite a delirium diagnosis. Defendant did not show that she was suffering from such on the dates that probation was violated; moreover, an examination showed no mental defect, and her hallucinations were not involved with her probation revocation. Anglin v. State, 98 Ark. App. 34, 249 S.W.3d 836 (2007).

After defendant's drug-court probation was revoked, her argument that she was ineligible due to a mental health issue was not considered on review because it was not raised to the trial court. Anglin v. State, 98 Ark. App. 34, 249 S.W.3d 836 (2007).

16-98-301. Short title and definitions.

(a) This subchapter shall be known as the "Arkansas Drug Court Act".

(b) As used in this subchapter:

(1) "Evidence-based practices" means practices proven through research to reduce recidivism;

(2) "Validated risk-needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior; and

(3) "Violent felony offense" means an offense that is punishable by a term of imprisonment exceeding one (1) year, and during the course of the offense:

(A)(i) The person carried, possessed, or used a firearm or other dangerous weapon; and

(ii) The use of deadly force was used against another person; or

(B) Death or serious physical injury was inflicted upon another person, regardless of whether death or serious physical injury was an element of the crime for which the person was convicted.

History. Acts 2003, No. 1266, § 1; 2011, No. 570, § 111.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment added "and definitions" in the section heading; and added the (a) designation and (b).

CASE NOTES

Probation Revocation.

Trial court lacked authority, pursuant to § 5-4-303(d)(2), to lengthen defendant's probationary period where defendant had made progress in the drug-court program under the Drug Court Act (§ 16-98-301 et seq.), because the trial court did not hold a revocation hearing pursuant to § 5-4-310. Cross v. State, 2009 Ark. 597, 357 S.W.3d 895 (2009).

16-98-302. Purpose and intent.

(a) There is a critical need for judicial intervention and support for effective treatment programs that reduce the incidence of drug use, drug addiction, and family separation due to parental substance abuse and drug-related crimes. It is the intent of the General Assembly for this subchapter to enhance public safety by facilitating the creation, expansion, and coordination of drug court programs.

(b) The goals of the drug court programs in this state shall be consistent with the standards adopted by the United States Department of Justice and recommended by the National Association of Drug Court Professionals and shall include the following key components:

(1) Integration of substance abuse treatment with justice system case processing;

(2) Use of a nonadversarial approach in which prosecution and defense promote public safety while protecting the right of the accused to due process;

(3) Early identification, with the use of a validated risk-needs assessement, of eligible moderate-to-high-risk participants and prompt placement of eligible participants;

(4) Access to a continuum of treatment, rehabilitation, and related services;

(5) Frequent testing for alcohol and illicit drugs;

(6) A coordinated strategy among the judge, prosecution, defense, and treatment providers to govern offender compliance;

(7) Ongoing judicial interaction with each participant;

(8) Monitoring and evaluation of the achievement of program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective planning, implementation, and operation; and

(10) Development of partnerships with public agencies and community-based organizations to generate local support and enhance drug court effectiveness.

(c)(1) Drug court programs are specialized court dockets within the existing structure of the Arkansas court system. Drug court programs offer judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases.

(2) The creation of a drug court docket and the appointment of a circuit judge to that docket shall be approved by the administrative judge in each judicial circuit and made a part of the judicial circuit's administrative plan required by Supreme Court Administrative Order Number 14.

(d) Drug court program success shall be determined by the rate of recidivism of all drug court participants, including participants who do not graduate.

History. Acts 2003, No. 1266, § 2; 2007, No. 1022, § 3; 2011, No. 570, § 112.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment, in (b)(3), inserted "with the use of a validated risk-needs assessment" and "moderate-to-high-risk"; and added (d).

16-98-303. Drug court programs authorized. [Effective until January 1, 2014.]

(a)(1) Each judicial district of this state is authorized to establish a drug court program under this subchapter.

(2)(A) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial district where the drug court program is located.

(B)(i) A drug court program may be preadjudication or postadjudication for an adult offender.

(ii) A juvenile drug court program or services may be used in a delinquency case or a family in need of services case pursuant to a diversion agreement under § 9-27-323.

(iii) A juvenile drug court program or services may be used in a dependency-neglect case under § 9-27-334.

(3) Notwithstanding the authorization described in subdivision (a)(1) of this section, no judge of a circuit court, drug court, or juvenile court may order any services or treatment under subsection (b) of this section or § 16-98-305 unless:

(A) An administrative and programmatic appropriation has been made for those purposes;

(B) Administrative and programmatic funding is available for those purposes; and

(C) Administrative and programmatic positions have been authorized for those purposes.

(b)(1) A drug court program shall incorporate services from the Department of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(2) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Department of Community Correction shall:

(A) Provide positions for persons to serve as probation officers, drug counselors, and administrative assistants;

(B) Provide for drug testing for drug court program participants;

(C) Provide for intensive outpatient treatment for drug court program participants;

(D) Provide for intensive short-term and long-term residential treatment for drug court program participants; and

(E) Develop clinical assessment capacity, including drug testing, to identify participants with a substance addiction and develop a treatment protocol that improves the person's likelihood of success.

(3) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Department of Human Services shall:

(A) Provide positions for persons to serve as drug counselors and administrative assistants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(B) Provide for drug testing for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(C) Provide for intensive outpatient treatment for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(D) Provide for intensive short-term and long-term residential treatment for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(E) Certify and license treatment providers and treatment facilities that serve drug court program participants;

(F) Provide and oversee residential beds for drug court programs;

(G) Oversee catchment area facilities for drug court programs;

(H) Act as a liaison between the courts and drug court program participants; and

(I) Oversee performance standards for residential and long-term facilities providing services to drug court programs.

(4) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Administrative Office of the Courts shall:

(A) Provide state-level coordination and support for drug court judges and their programs;

(B) Administer funds for the maintenance and operation of local drug court programs;

(C) Provide training and education to drug court judges and other professionals involved in drug court programs;

(D) Operate as a liaison between drug court judges and other state-level agencies providing services to drug court programs;

(E) Develop criteria for determining new drug court locations that take into account:

(i) The current size of the defendant population that meets the criteria for drug court participation;

(ii) Recent trends indicating an increasing defendant population that meets the criteria for drug court participation;

(iii) Existing drug treatment programs currently in place and operating through the courts, the county jail, or the Department of Correction; and

(iv) The drug court program's use of evidence-based practices by key partners involved in the prospective drug court including those to assess the needs of drug court participants in order to effectively target programming toward high-risk participants.

(c)(1) A drug court program shall not be available to any defendant who:

(A) Has a pending charge for a violent felony against him or her; or

(B) Has been convicted of a violent felony offense as defined in this subchapter or adjudicated delinquent as a juvenile of a violent felony offense; or

(C)(i) Is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(ii) The exclusion under subdivision (c)(1)(C)(i) of this section shall not apply to the offense of prostitution, § 5-70-102.

(2) Eligible offenses may be further restricted by the rules of a specific drug court program.

(3) Nothing in this subchapter shall require a drug court judge to consider or accept every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program.

(4) Any defendant who is denied entry to a drug court program shall be prosecuted as provided by law.

(d)(1) Drug court programs may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems.

(2) A drug court team shall be designated by a circuit judge assigned to manage the drug court docket and may include a circuit judge, a prosecuting attorney, a public defender or private defense attorney, one (1) or more addiction counselors, one (1) or more probation officers, one (1) or more private treatment provider representatives, and any other individual or individuals determined necessary by the drug court judge.

(3)(A) The administrative judge of the judicial district shall designate one (1) or more circuit judges to administer the drug court program.

(B) If a county is in a judicial district that does not have a circuit judge who is able to administer the drug court program on a

consistent basis, the administrative plan for the judicial circuit required by Administrative Order No. 14 of the Supreme Court may designate a district court judge to administer the drug court program.

(e) Each judicial district may develop a training and implementation manual for drug court programs with the assistance of the:

(1) Department of Human Services;

(2) Department of Education;

(3) Department of Career Education;

(4) Department of Community Correction; and

(5) Administrative Office of the Courts.

(f) A Division of Drug Court Programs is created within the Administrative Office of the Courts. The position of Drug Court Coordinator is created within the Division of Drug Court Programs, and the Drug Court Coordinator shall:

(1) Provide assistance, counsel, and advice to the Drug Court Advisory Committee;

(2) Serve as a coordinator between drug court judges, the Department of Community Correction, the Division of Behavioral Health Services of the Department of Human Services, private treatment provider representatives, and public health advocates;

(3) Establish, manage, and maintain a uniform statewide drug court information system to track information and data on drug court program participants to be reviewed by the Drug Court Advisory Committee;

(4) Train and educate drug court judges and drug court staff in those judicial districts maintaining a drug court program;

(5) Provide staff assistance to the Arkansas Association of Drug Court Professionals;

(6) Oversee the disbursement of funds appropriated to the Administrative Office of the Courts for the maintenance and operation of local drug court programs based on a formula developed by the Administrative Office of the Courts and reviewed by the Drug Court Advisory Committee; and

(7) Develop guidelines to be reviewed by the Drug Court Advisory Committee to serve as a framework for developing effective local drug court programs and to provide a structure for conducting research and evaluation for drug court program accountability.

(g)(1) A drug court judge, on his or her own motion or upon a request from an offender, may order expungement and dismissal of a case if:

(A) The offender has successfully completed a drug court program, as determined by the drug court judge;

(B) The offender has received aftercare programming;

(C) The drug court judge has received a recommendation from the prosecuting attorney for expungement and dismissal of the case; and

(D) The drug court judge, after considering the offender's past criminal history, feels expungement and dismissal of the case is appropriate.

(2)(A) Except as provided in subdivision (g)(2)(B) of this section, if the offender has plead guilty or nolo contendere to or has been found

guilty of an offense falling within a target group under § 16-93-1202(10)(A)(i) in another Arkansas court, the drug court judge may order expungement and dismissal of the offense falling within a target group with the written concurrence of the other Arkansas court.

(B) The following offenses shall not be eligible for expungement under subdivision (g)(2)(A) of this section:

(i) Residential burglary, § 5-39-201(a);

(ii) Commercial burglary, § 5-39-201(b);

(iii) Breaking or entering, § 5-39-202; and

(iv) The fourth and subsequent offense of driving while intoxicated, § 5-65-103.

(3) Unless otherwise ordered by the drug court, expungement under this subsection shall be as described in § 16-90-901 et seq.

History. Acts 2003, No. 1266, § 3; 2007, No. 1022, § 4; 2009, No. 1491, § 2; 2011, No. 570, §§ 113–115; 2011, No. 1137, § 3; 2013, No. 1107, § 15.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Acts 2011, No. 1137, § 1, provided: "Legislative findings.

"(a) In a per curiam opinion dated February 9, 2011, the Supreme Court addressed the recommendations of the District Court Resource Assessment Board, one (1) of which stated that the General Assembly could authorize a state district court judge to preside over a drug court program, probation revocation proceeding, or a parole revocation proceeding. In Re Amendments to Administrative Order Nos. 4 and 18 and Regulations of the Arkansas Board of Certified Court Reporter Examiners § 1, 2011 Ark. 57 (2011).

"(b) That the General Assembly finds that allowing a state district court judge to preside over a drug court, a probation revocation proceeding, or a parole revocation proceeding promotes the sound and efficient administration of justice."

Publisher's Notes. For text of section effective January 1, 2014, see the following version.

Amendments. The 2009 amendment added (g).

The 2011 amendment by No. 570 added (b)(2)(E) and (b)(4)(E); in (c)(1)(A), inserted "charge for a" and substituted "felony" for "criminal charge"; and inserted "as defined in this subchapter" in (c)(1)(B);

The 2011 amendment by No. 1137 added (d)(3)(B).

The 2013 amendment substituted "Division of Behavioral Health Services of the Department of Human Services" for "Office of Alcohol and Drug Abuse Prevention" in (f)(2).

16-98-303. Drug court programs authorized. [Effective January 1, 2014.]

(a)(1) Each judicial district of this state is authorized to establish a drug court program under this subchapter.

(2)(A) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial district where the drug court program is located.

(B)(i) A drug court program may be preadjudication or postadjudication for an adult offender.

(ii) A juvenile drug court program or services may be used in a delinquency case or a family in need of services case pursuant to a diversion agreement under § 9-27-323.

(iii) A juvenile drug court program or services may be used in a dependency-neglect case under § 9-27-334.

(3) Notwithstanding the authorization described in subdivision (a)(1) of this section, no judge of a circuit court, drug court, or juvenile court may order any services or treatment under subsection (b) of this section or § 16-98-305 unless:

(A) An administrative and programmatic appropriation has been made for those purposes;

(B) Administrative and programmatic funding is available for those purposes; and

(C) Administrative and programmatic positions have been authorized for those purposes.

(b)(1) A drug court program shall incorporate services from the Department of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(2) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Department of Community Correction shall:

(A) Provide positions for persons to serve as probation officers, drug counselors, and administrative assistants;

(B) Provide for drug testing for drug court program participants;

(C) Provide for intensive outpatient treatment for drug court program participants;

(D) Provide for intensive short-term and long-term residential treatment for drug court program participants; and

(E) Develop clinical assessment capacity, including drug testing, to identify participants with a substance addiction and develop a treatment protocol that improves the person's likelihood of success.

(3) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Department of Human Services shall:

(A) Provide positions for persons to serve as drug counselors and administrative assistants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(B) Provide for drug testing for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(C) Provide for intensive outpatient treatment for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(D) Provide for intensive short-term and long-term residential treatment for drug court program participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(E) Certify and license treatment providers and treatment facilities that serve drug court program participants;

(F) Provide and oversee residential beds for drug court programs;

(G) Oversee catchment area facilities for drug court programs;

(H) Act as a liaison between the courts and drug court program participants; and

(I) Oversee performance standards for residential and long-term facilities providing services to drug court programs.

(4) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Administrative Office of the Courts shall:

(A) Provide state-level coordination and support for drug court judges and their programs;

(B) Administer funds for the maintenance and operation of local drug court programs;

(C) Provide training and education to drug court judges and other professionals involved in drug court programs;

(D) Operate as a liaison between drug court judges and other state-level agencies providing services to drug court programs;

(E) Develop criteria for determining new drug court locations that take into account:

(i) The current size of the defendant population that meets the criteria for drug court participation;

(ii) Recent trends indicating an increasing defendant population that meets the criteria for drug court participation;

(iii) Existing drug treatment programs currently in place and operating through the courts, the county jail, or the Department of Correction; and

(iv) The drug court program's use of evidence-based practices by key partners involved in the prospective drug court including those to assess the needs of drug court participants in order to effectively target programming toward high-risk participants.

(c)(1) A drug court program shall not be available to any defendant who:

(A) Has a pending charge for a violent felony against him or her; or

(B) Has been convicted of a violent felony offense as defined in this subchapter or adjudicated delinquent as a juvenile of a violent felony offense; or

(C)(i) Is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(ii) The exclusion under subdivision (c)(1)(C)(i) of this section shall not apply to the offense of prostitution, § 5-70-102.

(2) Eligible offenses may be further restricted by the rules of a specific drug court program.

(3) Nothing in this subchapter shall require a drug court judge to consider or accept every offender with a treatable condition or addiction, regardless of the fact that the controlling offense is eligible for consideration in the program.

(4) Any defendant who is denied entry to a drug court program shall be prosecuted as provided by law.

(d)(1) Drug court programs may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems.

(2) A drug court team shall be designated by a circuit judge assigned to manage the drug court docket and may include a circuit judge, a prosecuting attorney, a public defender or private defense attorney, one (1) or more addiction counselors, one (1) or more probation officers, one (1) or more private treatment provider representatives, and any other individual or individuals determined necessary by the drug court judge.

(3)(A) The administrative judge of the judicial district shall designate one (1) or more circuit judges to administer the drug court program.

(B) If a county is in a judicial district that does not have a circuit judge who is able to administer the drug court program on a consistent basis, the administrative plan for the judicial circuit required by Administrative Order No. 14 of the Supreme Court may designate a district court judge to administer the drug court program.

(e) Each judicial district may develop a training and implementation manual for drug court programs with the assistance of the:

(1) Department of Human Services;

(2) Department of Education;

(3) Department of Career Education;

(4) Department of Community Correction; and

(5) Administrative Office of the Courts.

(f) A Division of Drug Court Programs is created within the Administrative Office of the Courts. The position of Drug Court Coordinator is created within the Division of Drug Court Programs, and the Drug Court Coordinator shall:

(1) Provide assistance, counsel, and advice to the Drug Court Advisory Committee;

(2) Serve as a coordinator between drug court judges, the Department of Community Correction, the Division of Behavioral Health Services of the Department of Human Services, private treatment provider representatives, and public health advocates;

(3) Establish, manage, and maintain a uniform statewide drug court information system to track information and data on drug court program participants to be reviewed by the Drug Court Advisory Committee;

(4) Train and educate drug court judges and drug court staff in those judicial districts maintaining a drug court program;

(5) Provide staff assistance to the Arkansas Association of Drug Court Professionals;

(6) Oversee the disbursement of funds appropriated to the Administrative Office of the Courts for the maintenance and operation of local drug court programs based on a formula developed by the Administrative Office of the Courts and reviewed by the Drug Court Advisory Committee; and

(7) Develop guidelines to be reviewed by the Drug Court Advisory Committee to serve as a framework for developing effective local drug

court programs and to provide a structure for conducting research and evaluation for drug court program accountability.

(g)(1) A drug court program judge, on his or her own motion or upon a request from an offender, may order dismissal of a case and the sealing of the record if:

(A) The offender has successfully completed a drug court program, as determined by the drug court program judge;

(B) The offender has received aftercare programming;

(C) The drug court program judge has received a recommendation from the prosecuting attorney for dismissal of the case and the sealing of the record; and

(D) The drug court program judge, after considering the offender's past criminal history, determines that dismissal of the case and the sealing of the record are appropriate.

(2)(A) Except as provided in subdivision (g)(2)(B) of this section, if the offender has pleaded guilty or nolo contendere to or has been found guilty of an offense falling within a target group under § 16-93-1202(10)(A)(i) in another Arkansas court, the drug court program judge may order sealing and dismissal of the offense falling within a target group with the written concurrence of the other Arkansas court.

(B) The following offenses are not eligible for sealing under subdivision (g)(2)(A) of this section:

(i) Residential burglary, § 5-39-201(a);

(ii) Commercial burglary, § 5-39-201(b);

(iii) Breaking or entering, § 5-39-202; and

(iv) The fourth and subsequent offense of driving while intoxicated, § 5-65-103.

(3) Unless otherwise ordered by the drug court program judge, sealing under this subsection shall be as described in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

History. Acts 2003, No. 1266, § 3; 2007, No. 1022, § 4; 2009, No. 1491, § 2; 2011, No. 570, §§ 113–115; 2011, No. 1137, § 3; 2013, No. 1107, § 15; 2013, No. 1460, § 16.

Publisher's Notes. For text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2013 amendment by No. 1107 substituted "Division of Behavioral Health Services of the Department of Human Services" for "Office of Alcohol and Drug Abuse Prevention" in (f)(2).

The 2013 amendment by No. 1460 inserted "program" in (g)(1), (g)(1)(A), (g)(1)(C), (g)(1)(D), and (g)(2)(A); deleted "expungement and" preceding "dismissal" in (g)(1) and (g)(1)(C); inserted "and the sealing of the record" in (g)(1), (g)(1)(C), and (g)(1)(D); in (g)(1)(D), substituted "determines that" for "feels expungement and" and inserted "and the sealing of the record"; substituted "sealing and" for "expungement and" in (g)(2)(A); substituted "sealing" for "expungement" in (g)(2)(B) and (g)(3); and, in (g)(3), inserted "program judge" and substituted "the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401" for "§ 16-90-901."

Effective Dates. Acts 2013, No. 1460, § 17. Effective on and after January 1, 2014.

16-98-304. Cost and fees.

(a) The drug court judge may order the offender to pay:
(1) Court costs as provided in § 16-10-305;
(2) Treatment costs;
(3) Drug testing costs;
(4) A program user fee;
(5) Necessary supervision fees, including any applicable residential treatment fees; and
(6) Any fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) which are to be paid to the Department of Community Correction.

(b)(1) The drug court judge shall establish a schedule for the payment of costs and fees.

(2) The cost for treatment, drug testing, and supervision shall be set by the treatment and supervision providers respectively and made part of the order of the drug court judge for payment.

(3) Program user fees shall be set by the drug court judge.

(4) Treatment, drug testing, and supervision costs or fees shall be paid to the respective providers.

(5) Fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) shall be paid to the Department of Community Correction.

(6)(A) The MAGNUM Drug Court Fund is a special revenue fund created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(B) The MAGNUM Drug Court Fund shall consist of other moneys provided by law.

(7)(A) All court costs and program user fees assessed by the drug court judge shall be paid to the court clerk for remittance to the county treasury under § 14-14-1313.

(B) All installment payments shall initially be deemed to be collection of court costs under § 16-10-305 until the court costs have been collected in full with any remaining payments representing collections of other fees and costs as authorized in this section and shall be credited to the county administration of justice fund and distributed under § 16-10-307.

(C) All program user fees shall be credited to a fund known as the drug court program fund and appropriated by the quorum court for the benefit and administration of the drug court program.

(8) Court orders for costs and fees shall remain an obligation of the offender with court monitoring until fully paid.

History. Acts 2003, No. 1266, § 4; 2009, No. 490, § 1; 2013, No. 282, § 12.

Amendments. The 2009 amendment, in (a), inserted "as provided in § 16-10-305" in (a)(1), deleted "not to exceed twenty dollars ($20.00) per month" following "fee" in (a)(4), and inserted (a)(6); in (b), rewrote (b)(3) and (b)(5), substituted "the MAGNUM Drug Court Fund" for "The remaining user fees shall be remitted to the Treasurer of State by the court clerk for deposit in the MAGNUM Drug Court Fund, which" in (b)(6)(A), deleted "user fees and any" following "consist of"

in (b)(6)(B), inserted (b)(7), and redesignated the subsequent subdivision accordingly; and made related changes.

The 2013 amendment rewrote (b)(7)(B).

16-98-305. Required resources.

Each drug court program established under this subchapter, subject to an appropriation, funding, and position authorization, both programmatic and administrative, shall be provided with the following resources:

(1) The Department of Community Correction shall provide the following pursuant to § 16-98-303(a)(2)(B)(i) for adult offenders:

(A)(i) Except as provided in subdivision (1)(A)(ii) of this section, provide a minimum of one (1) drug counselor position for every thirty (30) drug court participants.

(ii) If a drug court judge does not require the drug counselor position or positions described in subdivision (1)(A)(i) of this section, funding for a drug counselor or counselors shall be provided under subdivision (1)(E)(i) of this section;

(B) Provide a minimum of one (1) probation officer position for every forty (40) drug court participants;

(C) Provide a minimum of one (1) administrative assistant position for each drug court program;

(D) Provide for drug screens and testing as needed; and

(E)(i) Based upon a formula to be developed by the Administrative Office of the Courts, reviewed by the Drug Court Advisory Committee, and approved by the Legislative Council, provide for:

(a) Intensive outpatient treatment to be made available to the drug court program in each judicial district;

(b) Short-term and long-term inpatient treatment to be made available to the drug court program in each judicial district; and

(c) A drug court judge to contract with a local licensed treatment provider for counseling services for drug court participants so that each privately contracted addiction counselor does not have more than thirty (30) drug court participants in his or her caseload.

(ii) The Department of Community Correction shall enter into an interagency memorandum of understanding with the Administrative Office of the Courts in order to establish the process and procedures for the payment of treatment services ordered by a drug court judge and funded through the Department of Community Correction.

(iii) Expenditures of funds for treatment services allocated to each drug court program under the formula described in subdivision (1)(E)(i) of this section shall be at the direction of a drug court judge, except as limited by the procedures adopted in the memorandum of understanding described in subdivision (1)(E)(ii) of this section;

(2) The Department of Human Services shall:

(A) Provide a minimum of one (1) drug counselor position for every thirty (30) drug court participants in delinquency cases, dependency-neglect cases, and family in need of services cases;

(B) Provide for drug screens and testing as needed in delinquency cases, dependency-neglect cases, and family in need of services cases; and

(C) Provide for intensive outpatient treatment and short-term and long-term inpatient treatment to be made available to the drug court program in each judicial district in delinquency cases, dependency-neglect cases, and family in need of services cases based upon a formula developed by the Administrative Office of the Courts and reviewed by the Drug Court Advisory Committee; and

(3) The Administrative Office of the Courts shall:

(A) Provide funding to be reviewed by the Drug Court Advisory Committee for additional ongoing maintenance and operation costs of local drug court programs not provided by the Department of Community Correction or the Department of Human Services, including local drug court program supplies, education, travel, and related expenses;

(B) Provide direct support to the drug court judge and drug court program;

(C) Provide coordination between the multidisciplinary team and the drug court judge;

(D) Provide case management;

(E) Monitor compliance of drug court participants with drug court program requirements; and

(F) Provide drug court program evaluation and accountability.

History. Acts 2007, No. 1022, § 5.

16-98-306. Collection of data.

(a)(1) A drug court program shall collect and provide data on drug court applicants and all participants as required by the Division of Drug Court Programs within the Administrative Office of the Courts in accordance with the rules promulgated under § 16-98-307.

(2) The data shall include:

(A) The total number of applicants;

(B) The total number of participants;

(C) The total number of successful applicants;

(D) The total number of successful participants;

(E) The reason why each unsuccessful participant did not complete the program;

(F) Information about what happened to each unsuccessful participant;

(G) The total number of participants who were arrested for a new criminal offense while in the drug court program;

(H) The total number of participants who were convicted of a new criminal offense while in the drug court program;

(I) The total number of participants who committed a violation of one (1) or more conditions of the drug court program and the resulting sanction;

(J) The results of the initial risk-needs assessment review for each participant; and

(K) Any other data or information as required by the Division of Drug Court Programs within the Administrative Office of the Courts in accordance with the rules promulgated under § 16-98-307.

(b) The data collected for evaluation purposes under subsection (a) of this section shall:

(1) Include a minimum standard data set developed and specified by the Division of Drug Court Programs; and

(2) Be maintained in the court files or be otherwise accessible by the courts and the Division of Drug Court Programs.

(c)(1) As directed by the Division of Drug Court Programs, after an individual is discharged either upon completion or termination of a drug court program, the drug court program shall conduct, as much as practical, follow-up contacts with and reviews of former drug court participants for key outcome indicators of drug use, recidivism, and employment.

(2)(A) The follow-up contacts with and reviews of former drug court participants shall be conducted as frequently and for a period of time as determined by the Division of Drug Court Programs based upon the nature of the drug court program and the nature of the participants.

(B) The follow-up contacts with and reviews of former drug court participants are not extensions of the drug court's jurisdiction over the drug court participants.

(d) For purposes of standardized measurement of success of drug court programs across the state, the Division of Drug Court Programs in consultation with other state agencies and subject to the review of the Drug Court Advisory Committee shall adopt an operational definition of terms such as "recidivism", "retention", "relapses", "restarts", "sanctions imposed", and "incentives given" to be used in any evaluation and report of drug court programs.

(e) Each drug court program shall provide to the Division of Drug Court Programs all information requested by the Division of Drug Court Programs.

(f) The Division of Drug Court Programs, the Department of Community Correction, the Office of Alcohol and Drug Abuse Prevention, and the Arkansas Crime Information Center shall work together to share and make available data to provide a comprehensive data management system for the state's drug court programs.

(g)(1) The Administrative Office of the Courts shall:

(A) Develop a statewide evaluation model to be reviewed by the Drug Court Advisory Committee; and

(B) Conduct ongoing evaluations of the effectiveness and efficiency of all drug court programs.

(2) A report of the evaluations of the Administrative Office of the Courts shall be submitted to the General Assembly by July 1 of each year.

History. Acts 2007, No. 1022, § 5; 2011, No. 570, § 116.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "and all participants" for "drug court participants, and the entire drug court program" in (a)(1); and added (a)(2).

16-98-307. Drug Court Advisory Committee — Creation.

(a) There is created a Drug Court Advisory Committee.

(b) The Drug Court Advisory Committee shall consist of the following members:

(1) The Chief Justice of the Supreme Court or the Chief Justice's designee who shall serve as chair;

(2) The Director of the Administrative Office of the Courts or the director's designee;

(3) A judge to be appointed by the Arkansas Judicial Council;

(4) The Director of the Department of Community Correction or the director's designee;

(5) The Director of the Department of Human Services or the director's designee;

(6) The Director of the Division of Behavioral Health Services or the director's designee;

(7) A prosecutor appointed by the Prosecutor Coordinator;

(8) A public defender appointed by the Executive Director of the Arkansas Public Defender Commission;

(9) A member of the Senate appointed by the President Pro Tempore of the Senate;

(10) A member of the House of Representatives appointed by the Speaker of the House of Representatives;

(11) The Arkansas Drug Director or the director's designee;

(12) The Chair of the Board of Corrections or the chair's designee; and

(13) The Chair of the Parole Board or the chair's designee.

(c) The chair or the chair's designee shall promptly call the first meeting after April 4, 2007.

(d)(1) The committee shall conduct its meetings at the State Capitol or at any place designated by the chair or the chair's designee.

(2) Meetings shall be held at least one (1) time every three (3) months but may occur more often at the call of the chair.

(e) If any vacancy occurs on the committee, the vacancy shall be filled by the same process as the original appointment.

(f) The committee shall establish rules and procedures for conducting its business.

(g) Members of the committee shall serve without compensation.

(h) A majority of the members of the committee shall constitute a quorum for transacting any business of the committee.

(i)(1) The committee is established to promote collaboration and provide recommendations on issues involving drug courts.

(2) The committee may provide advice and review on at least the following:

(A) Provisions to identify data to be collected for evaluation; and

(B) Provisions to ensure uniform data collection.

History. Acts 2007, No. 1022, § 5; 2011, No. 5, § 1; 2013, No. 1107, § 16.

Amendments. The 2011 amendment added (b)(13).

The 2013 amendment substituted "Division of Behavioral Health Services" for "Office of Alcohol and Drug Abuse Prevention" in (b)(6).

CHAPTER 99

PERFORMANCE INCENTIVE FUNDING FOR RECIDIVISM AND CRIME REDUCTION

SUBCHAPTER.

1. Performance Incentive Act of 2011.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Subchapter 1 — Performance Incentive Act of 2011

16-99-101. Purpose and intent.

(a) Both state and local agencies that implement criminal justice practices resulting in outcomes that reduce commitments to the Department of Correction should be rewarded.

(b) If a state agency, county, or judicial district has implemented proven risk-reduction strategies that reduce the number of offenders returning to the Department of Correction with no resultant increase in the crime rate; then, in order to reward the state agency, county, or judicial district and as an incentive to encourage similar practices elsewhere, the state agency, county, or judicial district should receive a monetary reward to continue those practices.

(c) The award would represent a portion of the monetary savings from the costs that would have been incurred had the state agency, county, or judicial district not reduced its impact on the Department of Correction.

(d) The goal of this chapter is to align state and local fiscal incentives by rewarding the Department of Community Correction, county gov-

ernments, and judicial districts for each entity's role in reducing its impact on the Department of Correction.

History. Acts 2011, No. 570, § 117.

16-99-102. Program authorized — Administration.

(a) Costs averted due to a reduction in commitments to the Department of Correction or a reduction in the period of time served in the Department of Correction, to the extent possible, shall be reinvested into those state agencies, counties, or judicial districts as an incentive to further the crime and recidivism reduction strategies being employed.

(b) The Department of Community Correction shall be the recipient of incentive funds upon meeting the requirements set out in this subchapter.

(c)(1) Counties, multicounty partnerships, and judicial districts shall be eligible to apply for participation in the performance incentive funding program set out in this subchapter on the reduction in the Department of Correction's population.

(2) Participation in the program will be determined through a competitive grant process.

(d) The Board of Corrections shall have the authority to manage the program and administer the grant funds to appropriate applicants and the Department of Community Correction.

(e)(1) Subject to the available funding, the Department of Community Correction shall manage and administer grant funds to itself and counties, multicounty partnerships, and judicial districts in order to implement the policies and programs authorized by this program.

(2) These shall be one-time-only grants not contingent on measured performance.

(3) All future funding under this section shall be tied to measured performance.

History. Acts 2011, No. 570, § 117.

16-99-103. Application.

(a)(1) The Department of Community Correction shall receive additional funding for committing to a reduction in the number of probation revocations that result from a technical violation or a new crime.

(2) The baseline for comparing probation revocation data shall be based on the number of probation revocations and expected length of stay.

(3) In order to qualify for the additional monetary incentives under this subchapter, the felony conviction rate for probationers must remain stable or decrease from the previous year.

(4) Each year the Department of Community Correction shall receive additional funds for reducing the net impact of revocations on the Department of Correction.

(5) The Department of Community Correction shall promulgate rules and regulations for the distribution and use of incentive funds that it receives, requiring that:

(A) No less than one-third (⅓) of the funds received each year are distributed to the individual probation or parole areas responsible for the revocation reductions while maintaining or improving public safety; and

(B) All of the funds received by the Department of Community Correction are invested in programs and practices designed to reduce recidivism.

(b)(1) A competitive grant process will distribute grants to five (5) individual counties, multicounty partnerships, or judicial districts that meet criteria established to improve public safety and reduce their net impact on the Department of Correction.

(2) The Board of Corrections shall have the authority to:

(A) Manage the competitive grant process;

(B) Determine appropriate criteria;

(C) Award grants; and

(D) Collect and evaluate the data from all grantee sites.

(3) Applications can come from:

(A) Individual counties;

(B) Multicounty partnerships; or

(C) Judicial districts.

(4) Four (4) of the five (5) grants shall be awarded to the counties, multicounty partnerships, or judicial districts with the largest number of annual Department of Correction commitments that meet the program criteria and submit acceptable applications.

(5) One (1) grant shall be awarded to a county, multicounty partnership, or judicial district representing a rural region of the state, notwithstanding the number of Department of Correction commitments from the applicant so long as the program criteria are met and the application is acceptable.

(6) Each year, the grant recipient shall receive additional funds equal to one-half (½) of the averted costs for reducing the net impact of its sentences on the Department of Correction.

(7) The baseline for comparing the net impact of sentences shall be based on the number of admissions and expected length of stay.

(8) In order to qualify for the additional monetary incentives under this subchapter, the net impact of the county's, and multicounty's, judicial district's above-guidelines sentences, based on admissions and expected length of stay, must remain stable or decrease from the previous year.

(9) The Board of Corrections shall promulgate rules and regulations for the distribution and use of incentive funds to successful applicants.

History. Acts 2011, No. 570, § 117.

16-99-104. Implementation.

The Board of Corrections shall:

(1) Establish rules and regulations for counties, multicounty partnerships, or judicial districts to apply for funds under this subchapter;

(2) Calculate and determine the baseline for the Department of Community Correction's revocation rate and for the Department of Correction's commitments' length of stay for evaluation purposes; and

(3) Calculate the averted costs to determine the amount to redirect to successful applicants who qualify for funds awarded under the performance incentive funding program.

History. Acts 2011, No. 570, § 117.

16-99-105. Reporting and data collection.

(a)(1) The Department of Community Correction shall provide data and information as requested by the Board of Corrections.

(2) That data and information shall include without limitation:

(A) The total number of probationers from each of the Department of Community Correction's individual probation or parole areas for the current year and previous years, as available;

(B) The total number of probation revocations, including revocations that result from violations and from new crimes for the current year and previous years, as available;

(C) The total number of new felony convictions and the rate of new felony convictions from each of the Department of Community Correction's individual probation or parole areas for the current year and previous years, as available;

(D) The amount of grant funds distributed to each individual probation or parole areas; and

(E)(i) The evidence-based programs established or enhanced by the Department of Community Correction as part of its effort to reduce revocations and improve public safety; and

(ii) Any subsequent evidence-based programs that contribute to the outcomes of the performance incentive funding program under this subchapter.

(b) Each grantee shall provide data and information as requested by the Board of Corrections, including without limitation:

(1) The list of counties, if in a multicounty partnership, participating;

(2) The amount of grant funds distributed under this chapter to each county, multicounty partnership, or judicial district; and

(3) The programs established or enhanced as part of each applicant's successful grant proposal and any subsequent evidence-based programs that contribute to the outcomes of the program under this chapter.

(c) The board shall report all data, findings, and recommendations annually for improvement to the:

(1) Governor;

(2) Chief Justice of the Supreme Court;

(3) Director of the Administrative Office of the Courts;
(4) Speaker of the House of Representatives;
(5) President of the Senate;
(6) Chair of the House Judiciary Committee; and
(7) Chair of the Senate Judiciary Committee.

(d)(1) The board's report shall include an analysis of the impact of the performance incentive funding program.

(2) This analysis shall include without limitation the effect, compared to baseline, on net Department of Correction bed usage by the Department of Community Correction and by all county grantees, as well as Department of Correction admissions and lengths-of-stay, moneys paid out, revocation rates and new crime conviction rates for the Department of Community Correction, and guidelines compliance for participating counties.

(3) The board shall provide analyses on an area-by-area basis for the Department of Community Correction performance incentive funding program and on a county-by-county, multicounty-partnership, or judicial-district basis for the local performance-incentive funding program.

(e) The board shall conduct a study and make recommendations, as needed, to those persons or entities listed in subsection (b) of this section, three (3) years after the implementation of the program established under this chapter and every third year thereafter to determine whether to change the baseline year that determines revocation reduction benchmarks.

History. Acts 2011, No. 570, § 117.

SUBTITLE 7. PARTICULAR PROCEEDINGS AND REMEDIES

CHAPTER 105

ABATEMENT OF NUISANCES

SUBCHAPTER.
4. Drugs.

Subchapter 4 — Drugs

16-105-402. Common nuisance declared.

(a) As used in this section, "owner" means any person in whom is vested the ownership and title of property and who is the owner of record, including without limitation a local, city, state, or federal governmental entity.

(b) A person or entity listed under § 16-105-403 may bring a cause of action against the owner of any of the following that is used for the purpose of unlawfully selling, storing, keeping, manufacturing, using, or distributing a controlled substance, precursor, or analog specified in § 5-64-101 et seq.:

(1) A store or shop;

(2) A warehouse;

(3) A dwelling house;

(4) A building;

(5) A boat;

(6) An airplane;

(7) Abandoned governmental or municipal property; or

(8) Any other property or structure.

(c)(1) If a place listed in subsection (b) of this section is deemed a common nuisance by a court, the court shall order that the common nuisance be enjoined, abated, and prevented.

(2) Costs of enjoinment, abatement, and prevention as well as damages may be recovered against any person or entity found to be the owner of the common nuisance property.

History. Acts 1989, No. 556, § 1; 2013, No. 1219, § 1.

Amendments. The 2013 amendment rewrote this section.

16-105-403. Action to abate — Permanent injunction.

(a) As used in this section, "established neighborhood or community organization" means a group, whether or not incorporated, that:

(1) Consists of persons who reside or work at or in a building, complex of buildings, street, block, or neighborhood any part of which is located on or within one thousand feet (1,000') of the premises alleged to be a common nuisance; and

(2) Has the purpose of benefitting the quality of life in its neighborhood or community, including without limitation treatment programs.

(b) The following persons or entities may bring a cause of action under this subchapter to enjoin, abate, and prevent a common nuisance that is being kept, maintained, or that exists to prevent the common nuisance, and to perpetually enjoin the person, entity, owner, lessee, or agent of the place listed under § 16-105-402(b), in or upon which the common nuisance exists, from directly or indirectly maintaining or permitting the common nuisance:

(1) The prosecuting attorney of the county;

(2) The city attorney of any incorporated city;

(3) Any citizen of the state or resident of the county, in his or her own name;

(4) The county attorney;

(5) The Attorney General; or

(6) Any established neighborhood or community organization.

History. Acts 1989, No. 556, § 1; 1991, No. 926, § 1; 1991, No. 1187, § 1; 2013, No. 1219, § 2.

Amendments. The 2013 amendment rewrote this section.

16-105-408. Dismissal for want of prosecution.

If a complaint under this subchapter is filed by a citizen of the state, resident of the county, or established neighborhood or community organization, the complaint shall not be dismissed by the citizen of the state, resident of the county, or established neighborhood community organization or for want of prosecution except upon a sworn statement setting forth the reasons why the complaint should be dismissed and by dismissal ordered by the court.

History. Acts 1989, No. 556, § 1; 2013, No. 1219, § 3.

Amendments. The 2013 amendment rewrote this section.

16-105-409. Costs.

If a cause of action under this subchapter is brought by a citizen of the state, resident of the county, or established neighborhood or community organization and the court finds there was no reasonable ground or cause for the cause of action, the costs incurred by the defendant shall be taxed against the citizen of the state, resident of the county, or established neighborhood or community organization.

History. Acts 1989, No. 556, § 1; 2013, No. 1219, § 4.

Amendments. The 2013 amendment rewrote this section.

CHAPTER 106

ACTIONS BY OR AGAINST STATE

Subchapter 1 — General Provisions

16-106-101. Actions generally.

CASE NOTES

Venue Where Defendant Resides.

Where candidate filed a petition for qualification as an independent candidate for the office of Arkansas House of Representatives and his petition was denied because it did not contain the required number of verified signatures, the candidate erred by filing a civil rights action against the Arkansas Secretary of State in the Phillips County Circuit Court; subsection (d) of this section required the suit to be filed in Pulaski County, Arkansas. Daniels v. Weaver, 367 Ark. 327, 240 S.W.3d 95 (2006).

Cited: Ark. Game Fish Comm'n v. Mills, 371 Ark. 317, 265 S.W.3d 760 (2007); State v. Hammame, 102 Ark. App. 87, 282 S.W.3d 278 (2008).

Subchapter 2 — Prisoners — Court Actions

16-106-202. Premature, frivolous, or malicious lawsuits.

CASE NOTES

Application.

Petitioner failed to show that the circuit court erred when it determined his habeas petition was a civil action that constituted one strike for purposes of § 16-68-607, because this section had no application to § 16-68-607, and did apply, when the circuit court correctly found that the petition for writ of habeas corpus failed to state a claim upon which relief could be granted and the petition did constitute a strike for purposes of that section. McArty v. Hobbs, 2012 Ark. 257, — S.W.3d — (2012).

Subchapter 3 — Prisoners — Administrative Remedies

16-106-301. Exhaustion of administrative remedies required.

CASE NOTES

Construction.

It would be inconsistent with this section to adopt a prisoner's argument that the statute of limitations was tolled while his untimely grievances were being processed; the first purpose of the statute required that incarcerated persons exhausted their administrative remedies before filing an action pursuant to 42 U.S.C.S. § 1983. Winston v. Kelly, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 20836 (E.D. Ark. Feb. 15, 2013).

CHAPTER 108

ARBITRATION AND AWARD

SUBCHAPTER.

2. Uniform Arbitration Act.

Subchapter 1 — General Provisions

16-108-101. Proceedings.

CASE NOTES

Applicability.

Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., not the Arkansas Uniform Arbitration Act, applied to the parties' agreement. Both parties acknowledged that the parties' distribution agreement involved interstate commerce, and the agreement specifically stated that the FAA applied "as needed to uphold the validity or enforceability of the arbitration provisions of this Agreement." Gruma Corp. v. Morrison, 2010 Ark. 151, 362 S.W.3d 898 (2010).

Subchapter 2 — Uniform Arbitration Act

SECTION.

16-108-201. Definitions.

SECTION.

16-108-202. Notice.

Publisher's Notes. Acts 2011, No. 695, § 1, completely revised this subchapter. Where appropriate, prior histories have been carried over under the new section numbers. Former §§ 16-108-215, 16-108-221 through 16-108-224 were deleted altogether. Those sections were derived from:

16-108-215. Acts 1969, No. 260, § 15; A.S.A. 1947, § 34-525.

16-108-221. Acts 1969, No. 260, § 21; A.S.A. 1947, § 34-531.

16-108-222. Acts 1969, No. 260, § 22.

16-108-223. Acts 1969, No. 260, § 23; A.S.A. 1947, § 34-532.

16-108-224. Acts 1969, No. 260, § 24.

16-108-201. Definitions.

As used in this subchapter:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

(3) "Court" means a court of competent jurisdiction in this state;

(4) "Knowledge" means actual knowledge;

(5) "Person" means:

(A) An individual;

(B) A corporation;

(C) A business trust;
(D) An estate;
(E) A trust;
(F) A partnership;
(G) A limited liability company;
(H) An association;
(I) A joint venture;
(J) A government;
(K) A governmental subdivision, agency, or instrumentality;
(L) A public corporation; or
(M) Any other legal or commercial entity; and

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

History. Acts 2011, No. 695, § 1.

CASE NOTES

Insurance.

Circuit court did not err in denying an insurer's motion to compel arbitration in insurers' action alleging breach of an insurance contract because the McCarran-Ferguson Act, 15 U.S.C.S. §§ 1011 et seq., did not allow the Federal Arbitration Act (FAA), 9 U.S.C.S. §§ 1-16, to preempt this section, the Arkansas Uniform Arbitration Act, which prohibited arbitration under the facts; application of the FAA to enforce the arbitration agreement between the parties would invalidate the operation of subdivision (b)(2) of this section. Southern Pioneer Life Ins. Co. v. Thomas, 2011 Ark. 490, 385 S.W.3d 770 (2011).

Subdivision (b)(2) of this section, the Arkansas Uniform Arbitration Act, regulates the business of insurance by exempting arbitration agreements in insurance contracts from enforcement, and subdivision (b)(2) regulates insurance within the meaning of the McCarran-Ferguson Act, 15 U.S.C.S. §§ 1011 et seq.; subdivision (b)(2), affects policyholder risk by transferring or spreading the risk by introducing the possibility of jury verdicts into the process for resolving disputed claims, it regulates an integral part of the relationship between an insurer and insured by invalidating an otherwise mandatory insurance-contract term that would allow either party to compel arbitration of disputes arising thereunder, and it is not limited to entities within the insurance industry as it also exempts tort and employment claims from arbitration. Southern Pioneer Life Ins. Co. v. Thomas, 2011 Ark. 490, 385 S.W.3d 770 (2011).

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-202. Notice.

(a) Except as otherwise provided in this subchapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b)(1) A person has notice if the person has knowledge of the notice or has received notice.

(2) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

History. Acts 2011, No. 695, § 1.

CASE NOTES

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-203. When subchapter applies.

(a) This subchapter governs an agreement to arbitrate made on or after the effective date of this subchapter.

(b) This subchapter governs an agreement to arbitrate made before the effective date of this subchapter if all the parties to the agreement or to the arbitration proceeding so agree in a record.

History. Acts 2011, No. 695, § 1.

CASE NOTES

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-204. Effect of agreement to arbitrate — Party may not waive provisions.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this subchapter to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of:

(A) Section 16-108-205(a);

(B) Section 16-108-206(a);

(C) Section 16-108-208;

(D) Section 16-108-217(a);

(E) Section 16-108-217(b);

(F) Section 16-108-226; or

(G) Section 16-108-228;

(2) Agree to unreasonably restrict the right under § 16-108-209 to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under § 16-108-212 to disclosure of any facts by a neutral arbitrator; or

(4)(A) Waive the right under § 16-108-216 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this subchapter.

(B) However, an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of:

(1) This section;
(2) Section 16-108-203(a);
(3) Section 16-108-207;
(4) Section 16-108-214;
(5) Section 16-108-218;
(6) Section 16-108-220(d);
(7) Section 16-108-220(e);
(8) Section 16-108-222;
(9) Section 16-108-223;
(10) Section 16-108-224;
(11) Section 16-108-225(a);
(12) Section 16-108-225(b);
(13) Section 16-108-229; or
(14) Section 16-108-230.

History. Acts 2011, No. 695, § 1.

16-108-205. Application for judicial relief.

(a) Except as otherwise provided in § 16-108-228, an application for judicial relief under this subchapter must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b)(1) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this subchapter must be served in the manner provided by law for the service of a summons in a civil action.

(2) Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

History. Acts 1969, No. 260, § 16; A.S.A. 1947, § 34-526; Acts 2011, No. 695, § 1.

CASE NOTES

Representation.

Nonlawyer's representation of a corporation in arbitration proceedings constitutes the unauthorized practice of law. Arbitration proceedings bear significant indicia of legal proceedings under the Uniform Arbitration Act, which has been adopted by Arkansas, and if a hearing is held during arbitration, the parties have the right to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing. Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-206. Validity of agreement to arbitrate.

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of or claims that a controversy is not subject to an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

History. Acts 1969, No. 260, § 1; 1981, No. 616, § 1; A.S.A. 1947, § 34-511; Acts 1993, No. 287, § 1; 2003, No. 1185, § 224; 2011, No. 695, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Note, Issue Preclusion Is No Illusion for Arbitration in Arkansas: Riverdale Development Co. v. Ruffin Building Systems, Inc., 58 Ark. L. Rev. 929.

CASE NOTES

Applicability.

Trial court properly denied defendants' motion to compel arbitration in plaintiff's negligence action because although plaintiff agreed that any claims that she had against defendants would be governed by the Arkansas Uniform Arbitration Act, the Act specifically excluded claims sounding in tort from its boundaries. Wyatt v. Giles, 95 Ark. App. 204, 35 S.W.3d 552 (2006).

Farm owners' claims against a poultry processor for violation of the Arkansas Deceptive Trade Practices Act, § 4-88-101 et seq., were arbitrable under a broad arbitration clause contained in an agreement between the parties; an Arkansas choice-of-law provision in the agreement did not require application of § 16-108-201(b)(2) of the Arkansas Uniform Arbitration Act, under which contractual arbitration provisions did not apply to tort claims. Hudson v. Conagra Poultry Co., 484 F.3d 496 (8th Cir. 2007).

In a dispute arising out of an agreement to buy an insurance brokerage corporation, the parties' stock-purchase agreement was referred to in order to determine if the purchasers, a trustee, trusts, and family members, intended to arbitrate their dispute with a financial corporation. The agreement indicated that the trustee's, trusts', and family members' claims, which included tort claims stemming from a breach of contract claim, fell squarely within the agreement. Ruth R. Remmel Revocable Trust v. Regions Fin. Corp., 369 Ark. 392, 255 S.W.3d 453 (2007), rehearing denied, Remmel Trust v. Regions Fin. Corp., — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 429 (May 17, 2007).

In a case in which a nursing home facility sought to arbitrate an underlying state case for wrongful death pursuant to an arbitration clause in the admission agreement and the special administratrix argued that the arbitration clause was an attempt to contract away the deceased's constitutional right to a jury, while subdivision (b)(2) of this section provided that an agreement to arbitrate had no application to personal injury or tort matters, the Federal Arbitration Act preempted state law which would invalidate an otherwise valid agreement to arbitrate. Northport Health Servs. of Ark., LLC v. Robinson, —

F. Supp. 2d —, 2009 U.S. Dist. LEXIS 6482 (W.D. Ark. Jan. 12, 2009).

Cited: Asbury Auto. Used Car Ctr., L.L.C. v. Brosh, 364 Ark. 386, 220 S.W.3d 637 (2005).

16-108-207. Motion to compel or stay arbitration.

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b)(1) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue.

(2) If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not under subsection (a) or subsection (b) of this section order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e)(1) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court.

(2) Otherwise, a motion under this section may be made in any court as provided in § 16-108-227.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g)(1) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration.

(2) If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

History. Acts 1969, No. 260, § 2; A.S.A. 1947, § 34-512; Acts 2011, No. 695, § 1.

RESEARCH REFERENCES

ALR. Application of Equitable Estoppel by Nonsignatory to Compel Arbitration — Federal Cases. 39 A.L.R. Fed. 2d 17.

Application of Equitable Estoppel Against Nonsignatory to Compel Arbitration Under Federal Law. 43 A.L.R. Fed. 2d 275.

CASE NOTES

Analysis

Agreement for Arbitration.
Mutuality of Obligation.

Agreement for Arbitration.

Appellant investment firm's motion to compel arbitration pursuant to the Federal Arbitration Act was properly denied because, although an arbitration clause in an account agreement covered a conversion claim if there were a contract between the parties, the question of an attorney's agency in creating the account with appellee clients' money remained to be tried before it could be decided if the parties, the clients and the investment firm, had a contract. Sterne, Agee & Leach, Inc. v. Way, 101 Ark. App. 23, 270 S.W.3d 369 (2007).

Pursuant to subsection (d) of this section, the appellate court's reversal only pertained to the appellees' breach of contract claims, which shall be stayed and ordered to arbitration. Hot Spring County Med. Ctr. v. Ark. Radiology Affiliates, P.A., 103 Ark. App. 252, 288 S.W.3d 676 (2008).

Mutuality of Obligation.

Used car center's motion to compel arbitration under subsection (a) of this section was properly denied where the arbitration agreement lacked mutuality; because the arbitration agreement lacked mutuality of obligation, the arbitration clauses were unenforceable. Asbury Auto. Used Car Ctr., L.L.C. v. Brosh, 364 Ark. 386, 220 S.W.3d 637 (2005).

16-108-208. Provisional remedies.

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or subsection (b) of this section.

History. Acts 2011, No. 695, § 1.

16-108-209. Initiation of arbitration.

(a)(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate:

(A) In the agreed manner between the parties;

(B) In the absence of agreement, by:

(i) Certified or registered mail, return receipt requested and obtained; or

(ii) Service as authorized for the commencement of a civil action.

(2) The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under § 16-108-215(c) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

History. Acts 2011, No. 695, § 1.

16-108-210. Consolidation of separate arbitration proceedings.

(a) Except as otherwise provided in subsections (c) and (d) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons, or one (1) of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) Except as provided in subsection (d) of this section, the court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

(d)(1) An agreement that prohibits the consolidation of arbitration claims or proceedings or denies arbitration for a class of persons involving substantially similar issues shall be closely scrutinized and shall not be enforced if found unconscionable.

(2) An agreement may be found unconscionable under this subdivision (d) if:

(A) The agreement is unreasonable, one-sided, or contains language that is difficult to notice or to understand;

(B) A meaningful choice of whether or not to agree to the arbitration provisions of the agreement is not provided; or

(C) The agreement is not balanced or fair under reasonable standards of fair dealing.

History. Acts 2011, No. 695, § 1.

16-108-211. Appointment of arbitrator — Service as a neutral arbitrator.

(a)(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed unless the method fails.

(2)(A) If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator.

(B) An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

History. Acts 1969, No. 260, § 3; A.S.A. 1947, § 34-513; Acts 2011, No. 695, § 1.

CASE NOTES

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-212. Disclosure by arbitrator.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or subsection (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon

the fact disclosed, the objection may be a ground under § 16-108-223(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or subsection (b) of this section, the court under § 16-108-223(a)(2) may vacate an award, upon timely objection by a party.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under § 16-108-223(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under § 16-108-223(a)(2).

History. Acts 2011, No. 695, § 1.

CASE NOTES

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-213. Action by majority.

If there is more than one (1) arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all arbitrators shall conduct the hearing under § 16-108-215(c).

History. Acts 1969, No. 260, § 4; A.S.A. 1947, § 34-514; Acts 2011, No. 695, § 1.

CASE NOTES

Cited: Nisha, LLC v. Tribuilt Constr. Group, LLC, 2012 Ark. 130, 388 S.W.3d 444 (2012).

16-108-214. Immunity of arbitrator — Competency to testify — Attorney's fees and costs.

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil damages for any statement or decision made in connection with or arising out of the conduct of an arbitrator in a dispute resolution process unless the person acted in a manner exhibiting willful or wanton misconduct.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by § 16-108-212 does not cause any loss of qualified immunity under this section.

(d)(1) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) Subdivision (d)(1) of this section does not apply to:

(A) The extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(B) A hearing on a motion to vacate an award under § 16-108-223(a)(1) or (a)(2) if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

History. Acts 2011, No. 695, § 1.

16-108-215. Arbitration process.

(a)(1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding.

(2) The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one (1) party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c)(1) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins.

(2) Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection.

(3) Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date.

(4) The arbitrator may hear and decide the controversy upon the evidence produced although a party who was notified of the arbitration proceeding does not appear.

(5) The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to:

(1) Be heard;

(2) Present evidence material to the controversy; and

(3) Cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed under § 16-108-211 to continue the proceeding and to resolve the controversy.

History. Acts 1969, No. 260, § 5; A.S.A. 1947, § 34-515; Acts 2011, No. 695, § 1.

RESEARCH REFERENCES

ALR. Consolidation by State Court of Arbitration Proceedings Brought Under State Law. 31 A.L.R.6th 433.

16-108-216. Representation by lawyer.

A party to an arbitration proceeding may be represented by a lawyer.

History. Acts 1969, No. 260, § 6; A.S.A. 1947, § 34-516; Acts 2011, No. 695, § 1.

16-108-217. Witnesses — Subpoenas — Depositions — Discovery.

(a)(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths.

(2) A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b)(1) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be

taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing.

(2) The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g)(1) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective.

(2) A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

History. Acts 1969, No. 260, § 7; A.S.A. 1947, § 34-517; Acts 2011, No. 695, § 1.

RESEARCH REFERENCES

ALR. Discovery in Federal Arbitration Proceedings Under Discovery Provision of Federal Arbitration Act (FAA), 9 USCS § 7, and Federal Rules of Civil Procedure, as Permitted by Fed. R. Civ. P. 81(a)(6)(B). 45 A.L.R. Fed. 2d 51.

16-108-218. Judicial enforcement of preaward ruling by arbitrator.

(a) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under § 16-108-219.

(b)(1) A prevailing party may make a motion to the court for an expedited order to confirm the award under § 16-108-222, in which case the court shall summarily decide the motion.

(2) The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under § 16-108-223 or § 16-108-224.

History. Acts 2011, No. 695, § 1.

16-108-219. Award.

(a)(1)(A) An arbitrator shall make a record of an award.

(B) The record must be signed or otherwise authenticated by any arbitrator who concurs with the award.

(2) The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b)(1) An award must be made within the time specified by the agreement to arbitrate or, if not specified in the agreement, within the time ordered by the court.

(2)(A) The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time.

(B) The court or the parties may do so within or after the time specified or ordered.

(3) A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

History. Acts 1969, No. 260, § 8; A.S.A. 1947, § 34-518; Acts 2011, No. 695, § 1.

16-108-220. Change of award by arbitrator.

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in § 16-108-224(a)(1) or § 16-108-224(a)(3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section must be made and notice given to all parties within twenty (20) days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within ten (10) days after receipt of the notice.

(d) If a motion to the court is pending under § 16-108-222, § 16-108-223, or § 16-108-224, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in § 16-108-224(a)(1) or § 16-108-224(a)(3);

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected under this section is subject to § 16-108-219(a) and §§ 16-108-222 — 16-108-224.

History. Acts 1969, No. 260, § 9; A.S.A. 1947, § 34-519; Acts 2011, No. 695, § 1.

16-108-221. Remedies — Fees and expenses of arbitration proceeding.

(a)(1) An arbitrator may award any damages that a court is authorized to award by law in a civil action involving the same claim, and the evidence produced at the hearing justifies the award under the legal standard otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(b)(1) As to all remedies other than those authorized by subsection (a) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding.

(2) The fact that such a remedy could not or would not be granted by the court is not a ground for:

(A) Refusing to confirm an award under § 16-108-222; or

(B) Vacating an award under § 16-108-223.

(c) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(d) If requested by a party at any time prior to receipt of notice of the award, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award.

History. Acts 1969, No. 260, § 10; A.S.A. 1947, § 34-520; Acts 2011, No. 695, § 1.

16-108-222. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless the

award is modified or corrected under § 16-108-220 or § 16-108-224 or is vacated under § 16-108-223.

History. Acts 1969, No. 260, § 11; A.S.A. 1947, § 34-521; Acts 2011, No. 695, § 1.

CASE NOTES

Judicial Review.

Legislature did not intend for § 17-42-107(b), regarding the capacity to sue for real estate commissions, to operate to prohibit individuals from consummating their arbitration proceeding by having a circuit court confirm their award and enter judgment thereon; to hold otherwise would deprive arbitrating parties of their traditional remedies, and the confirmation of an arbitration award could not be likened to filing suit. Keahey v. Plumlee, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

16-108-223. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-108-215 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under § 16-108-215(c) not later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in § 16-108-209 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within ninety (90) days after the movant receives notice of the award under § 16-108-219 or within ninety (90) days after the movant receives notice of a modified or corrected award under § 16-108-220, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety (90) days after the ground is known or, by the exercise of reasonable care, would have been known by the movant.

(c)(1) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing.

(2) If the award is vacated on a ground stated in subdivision (a)(1) or (a)(2) of this section, the rehearing must be before a new arbitrator.

(3) If the award is vacated on a ground stated in subdivision (a)(3), (a)(4), or (a)(6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor.

(4) The arbitrator must render the decision in the rehearing within the same time as that provided in § 16-108-219(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

History. Acts 1969, No. 260, § 12; A.S.A. 1947, § 34-522; Acts 2003, No. 1185, § 225; 2011, No. 695, § 1.

CASE NOTES

Grounds.

Trial court properly refused to vacate an arbitral decision under subsection (a) of this section that held that the renewal provisions in a lease constituted an express covenant for continued renewals as: (1) the arbitrators attempted to ascertain the parties' intent; (2) the mining lease required a substantial capital investment by the tenants such that they intended the lease to continue for an extended period; (3) the landlords were paid the fair market rate for stone and rock; (4) the renewal language was more specific than an ordinary covenant to renew; and (5) the arbitrators acted within their jurisdiction. Parks v. Rogers Group, Inc., 2011 Ark. App. 109, — S.W.3d — (2011).

16-108-224. Modification or correction of award.

(a) Upon motion made within ninety (90) days after the movant receives notice of the award under § 16-108-219 or within ninety (90) days after the movant receives notice of a modified or corrected award under § 16-108-220, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b)(1) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected.

(2) Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award under this section may be joined with a motion to vacate the award.

History. Acts 1969, No. 260, § 13; A.S.A. 1947, § 34-523; Acts 2011, No. 695, § 1.

16-108-225. Judgment on award — Attorney's fees and litigation expenses.

(a)(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the award.

(2) The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under § 16-108-222, § 16-108-223, or § 16-108-224, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

History. Acts 1969, No. 260, § 14; A.S.A. 1947, § 34-524; Acts 2011, No. 695, § 1.

16-108-226. Jurisdiction.

(a) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this subchapter.

History. Acts 1969, No. 260, § 17; A.S.A. 1947, § 34-527; Acts 2003, No. 1185, § 226; 2011, No. 695, § 1.

CASE NOTES

Arbitration.

Legislature did not intend for § 17-42-107(b), regarding the capacity to sue for real estate commissions, to operate to prohibit individuals from consummating their arbitration proceeding by having a circuit court confirm their award and enter judgment thereon; to hold otherwise would deprive arbitrating parties of their traditional remedies, and the confirmation of an arbitration award could not be likened to filing suit. Keahey v. Plumlee, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

16-108-227. Venue.

(a)(1) A motion under § 16-108-205 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held.

(2) Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state.

(b) All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

History. Acts 1969, No. 260, § 18; A.S.A. 1947, § 34-528; Acts 2003, No. 1185, § 226; 2011, No. 695, § 1.

16-108-228. Appeals.

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered under this subchapter.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

History. Acts 1969, No. 260, § 19; A.S.A. 1947, § 34-529; Acts 2011, No. 695, § 1.

RESEARCH REFERENCES

ALR. Adoption of manifest disregard of law standard as nonstatutory ground to review arbitration awards governed by Uniform Arbitration Act (UAA). 14 A.L.R.6th 491.

CASE NOTES

Appealable Orders.

Appellate court overruled the credit card customer's assertion that the appellate court had no jurisdiction to review the denial of the bank's petition and application to confirm the arbitration award against the customer, because the bank was appealing from the denial of its petition to confirm the arbitration award, not from the denial of its motion for summary judgment. MBNA Am. Bank, N.A. v. Blanks, 100 Ark. App. 8, 262 S.W.3d 618 (2007).

Cited: Wyatt v. Giles, 95 Ark. App. 204, 35 S.W.3d 552 (2006); Sterne, Agee & Leach, Inc. v. Way, 101 Ark. App. 23, 270 S.W.3d 369 (2007); HPD, LLC v. Tetra Techs., Inc., 2012 Ark. 408, — S.W.3d —, 2012 Ark. LEXIS 427 (Nov. 1, 2012).

16-108-229. Relationship to Electronic Signatures in Global and National Commerce Act.

The provisions of this subchapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures, conform

to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.

History. Acts 2011, No. 695, § 1.

16-108-230. Savings clause — Certain actions excluded.

(a) This subchapter does not affect an action or proceeding commenced or a right accrued before this subchapter takes effect.

(b) This subchapter does not apply to:

(1) Personal injury or tort matters;

(2) Employer-employee disputes; or

(3) An insured or beneficiary under any insurance policy or annuity contract.

History. Acts 1969, No. 260, § 20; A.S.A. 1947, § 34-530; Acts 2011, No. 695, § 1.

CASE NOTES

Employer-Employee Dispute.

Trial court did not err in refusing to compel arbitration with respect to a former employer's breach-of-contract actions against former employees because this section, the Arkansas Uniform Arbitration Act, expressly excluded employer-employee disputes, and the only arbitration clause was found in an employment agreement that had expired three years earlier but the employer made no claim based on the employment agreement; rather, the employer based the breach-of-contract claims on a merger agreement and a covenant not to compete agreement, which unambiguously did not provide for arbitration. Phillippy v. ANB Fin. Servs., LLC, 2011 Ark. App. 639, — S.W.3d — (2011).

CHAPTER 110

ATTACHMENT AND GARNISHMENT

SUBCHAPTER.

4. Garnishment Proceedings.

Subchapter 4 — Garnishment Proceedings

SECTION.

16-110-401. Grounds.

16-110-407. Failure of garnishee to answer.

16-110-401. Grounds.

(a)(1) In all cases where any plaintiff may begin an action in any court of record, or before any justice of the peace, or may have obtained a judgment before any of the courts, and the plaintiff shall have reason to believe that any other person is indebted to the defendant or has in his or her hands or possession goods and chattels, moneys, credits, and effects belonging to the defendant, the plaintiff may sue out a writ of

garnishment, setting forth the claim, demand, or judgment and commanding the officer charged with the execution thereof to summon the person therein named as garnishee, to appear at the return day of the writ and answer what goods, chattels, moneys, credits, and effects he or she may have in his or her hands or possession belonging to the defendant to satisfy the judgment, and answer such further interrogatories as may be exhibited against him.

(2) Further, the writ of garnishment served on the garnishee shall contain one (1) of the following notices:

(A) "NOTICE TO NON-EMPLOYER GARNISHEE
FAILURE TO ANSWER THIS WRIT WITHIN 30 DAYS OR FAILURE OR REFUSAL TO ANSWER THE INTERROGATORIES ATTACHED HERETO SHALL RESULT IN THE COURT ENTERING A JUDGMENT AGAINST YOU AND YOU BECOMING PERSONALLY LIABLE FOR THE FULL AMOUNT SPECIFIED IN THIS WRIT TOGETHER WITH COSTS OF THIS ACTION AS PROVIDED BY ARKANSAS CODE ANNOTATED § 16-110-407."; or

(B) "NOTICE TO EMPLOYER GARNISHEE
FAILURE TO ANSWER THIS WRIT WITHIN 30 DAYS OR FAILURE OR REFUSAL TO ANSWER THE INTERROGATORIES ATTACHED HERETO SHALL RESULT IN THE COURT ENTERING A JUDGMENT AGAINST YOU AND YOU BECOMING PERSONALLY LIABLE FOR THE AMOUNT OF THE NON-EXEMPT WAGES OWED THE DEBTOR-EMPLOYEE ON THE DATE YOU WERE SERVED THIS WRIT AS PROVIDED BY ARKANSAS CODE ANNOTATED § 16-110-407."

(3) This notice shall be in addition to the notice required to employer garnishees under § 16-110-416.

(b) However, if the garnishment is issued before the judgment, the plaintiff shall give bond in double the amount for which the garnishment is issued that he or she will pay the defendant all damages that he or she may sustain by the wrongful bringing of his or her suit or the issuing of the garnishment.

History. Acts 1889, No. 115, § 1, p. 168; 1895, No. 134, § 1, p. 196; C. & M. Dig., § 4906; Pope's Dig., § 6119; A.S.A. 1947, § 31-501; Acts 1991, No. 1027, § 3; 2013, No. 229, § 1.

Amendments. The 2013 amendment substituted "WITHIN 30 DAYS" for "WITHIN 20 DAYS" in (a)(2)(B).

RESEARCH REFERENCES

Ark. L. Rev. Note, Vanished in the Blink of an Eye: Split-Second Garnishment Liability and Loan Manager Accounts in the Wake of In re Southwestern Glass, 58 Ark. L. Rev. 893.

16-110-407. Failure of garnishee to answer.

(a) If any garnishee, after having been duly served with a writ of garnishment, shall neglect or refuse to answer the interrogatories exhibited to him or her, on or before thirty (30) days after service of the writ, the court, upon motion of the plaintiff, may issue a notice to the garnishee, requiring him or her to appear personally at a hearing not later than ten (10) days after receipt of said notice or at such other later date as the court may fix and answer the allegations and interrogatories of the plaintiff. Service of the notice may be made either by the clerk, or by the plaintiff, by any method prescribed by Arkansas Rules of Civil Procedure for service of notice.

(b) The court, after hearing and reviewing the evidence and testimony of both parties, may then render judgment against the garnishee in such amount, if any, as the court finds the garnishee held at the time of service of the writ of garnishment, of any goods, chattels, wages, credits and effects belonging to the defendant, not otherwise exempt under state or federal law; together with attorney's fees and such other reasonable expenses incurred by the plaintiff, as the court may deem appropriate under the facts and circumstances.

History. Acts 1889, No. 115, § 9, p. 168; C. & M. Dig., § 4916; Pope's Dig., § 6129; A.S.A. 1947, § 31-512; Acts 1989, No. 463, § 1; 1991, No. 1027, § 1; 2013, No. 229, § 2.

Amendments. The 2013 amendment substituted "thirty (30)" for "twenty (20)" in (a).

CASE NOTES

Analysis

Appeals.
Liability upon Default.

Appeals.

Employer, as garnishee, was required to withhold only $1,086.37 from the employee's wages under this section and Wash. Rev. Code § 6.27.200 as both parties conceded the proper amount owed to the insurer was $1,086.37, not $11.523.39 listed in the default judgment; to allow the insurer's collection of entire amount owed before reduction would be inequitable. Nationwide Ins. Enter. v. Ibanez, 368 Ark. 432, 246 S.W.3d 883 (2007).

Liability upon Default.

Trial court erred in entering a writ of garnishment against an employer in the amount the employer owed at the time of service of the writ, plus the amount of nonexempt wages earned through the date of judgment, because this section specifically limited a defaulting garnishee's liability to the amount of nonexempt wages held at the time of service of the writ of garnishment. Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III L.P., 374 Ark. 489, 288 S.W.3d 627 (2008).

CHAPTER 111

DECLARATORY JUDGMENTS

16-111-101. Definition.

CASE NOTES

Analysis

Applicability.
Justiciable Controversy.

Applicability.

Petition for declaratory relief was denied as the individual's petition sought a declaration that her son, who witnessed his sister's death following an accident with the driver, could bring a claim for emotional damages; the Declaratory Judgment Act was not appropriate simply to determine whether a cause of action existed. Hardy v. United Servs. Auto. Ass'n, 95 Ark. App. 48, 233 S.W.3d 165 (2006).

Justiciable Controversy.

Doctor who had allowed his Arkansas medical license to lapse did not have standing to obtain a judgment declaring that § 17-95-409(b) did not apply to contracts under the Community Match Loan and Scholarship Program, established under §§ 6-81-715 to 6-81-717, because the Declaratory Judgment Statute, § 16-111-101 et seq., was applicable only where there was a present actual controversy. Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd., 2011 Ark. 491, 385 S.W.3d 762 (2011).

16-111-102. Legislative declaration — Purpose — Construction.

CASE NOTES

No Existing Legal Controversy.

Court did not err in concluding that the business was not entitled to declaratory relief, because there was no existing legal controversy, when the business sought a declaration that its conduct (sweepstakes promotion) was legal and not subject to prosecution, and it was apparent the business was seeking an advisory opinion rather than the resolution of an actual controversy; courts did not sit for the purpose of determining speculative and abstract questions of law or laying down rules for future conduct. Cancun Cyber Cafe & Bus. Ctr., Inc. v. City of N. Little Rock, 2012 Ark. 154, — S.W.3d — (2012).

Cited: Hardy v. United Servs. Auto. Ass'n, 95 Ark. App. 48, 233 S.W.3d 165 (2006); McAlmont Suburban Sewer Improvement Dist. No. 242 v. McCain-Hwy. 161, 99 Ark. App. 431, 262 S.W.3d 185 (2007); Statewide Outdoor Adver., LLC v. Town of Avoca, 104 Ark. App. 10, 289 S.W.3d 111 (2008).

16-111-103. Power of courts to declare rights, status, etc. — Form of declaration.

RESEARCH REFERENCES

ALR. What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act (28 USCS § 1341), Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Business Taxes. 31 A.L.R. Fed. 2d 237.

CASE NOTES

Analysis

In General.
Federal Jurisdiction.

In General.

Where the legal description for a mortgage only specifically listed one of two lots, the mortgagee's claim that the proper interpretation of the mortgage was that it included both lots was not procedurally barred by § 18-50-116(d)(2)(B) as (1) this section gave courts the power to declare rights, status, and other legal relations whether or not relief was or could have been claimed, (2) § 16-111-104 provided that the mortgagee could obtain a declaration of its rights under the mortgage, and (3) because no third parties were involved, no individuals not a party to the action were prejudiced by allowing the mortgagee to proceed in obtaining an interpretation of the mortgage. Acuff v. Citi-Mortgage, Inc., — F. Supp.2d —, 2006 U.S. Dist. LEXIS 67978 (E.D. Ark. Sept. 21, 2006).

Federal Jurisdiction.

Giving a broad construction to the Tax Injunction Act's (TIA), 28 U.S.C.S. § 1341, use of "tax," access and hook-up fees for new installations of water and sewer services qualified as taxes for purposes of the TIA. Because homebuilders' action was to enjoin the assessment and collection of taxes, and because the homebuilders had a plain, speedy, and efficient remedy in the state courts via § 16-113-306 and this section, the TIA barred federal jurisdiction over the illegal exaction claims based on Ark. Const., Art. 16, § 13 against a city, a utility, and a water and sewer commission, raised by the homebuilders. Northwest Ark. Home Builders Ass'n v. City of Rogers, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 19772 (W.D. Ark. Mar. 3, 2008).

Cited: Hardy v. United Servs. Auto. Ass'n, 95 Ark. App. 48, 233 S.W.3d 165 (2006).

16-111-104. Right to determination generally.

CASE NOTES

Analysis

In General.
Insurance Contracts.
Justiciable Controversy.
Mortgages.
Municipal Ordinances.
Rights of Third Parties.

In General.

In a City's challenge to the County Assessor's allocation of millage rates, the matter was appropriate for declaratory judgment as it involved questions that directly affected an existing bond issue and presented a justiciable issue for the trial court to decide. City of Fayetteville v. Wash. County, 369 Ark. 455, 255 S.W.3d 844 (2007).

Summary judgment was properly awarded to the State of Arkansas and a prosecuting attorney on petitioner's complaint for a declaratory judgment that a statute was unconstitutional because petitioner was not in custody; because petitioner was on probation, and therefore not in custody, petitioner was not entitled to any postconviction relief. Neely v. McCastlain, 2009 Ark. 189, 306 S.W.3d 424 (2009).

Insurance Contracts.

Summary judgment was properly granted in a declaratory judgment action as it related to an intentional act exclusion in a homeowner's policy because a negligence lawsuit brought by an injured party was based upon injuries caused by the unexpected result of an insured's intentional act of shooting a gun. However, there was ambiguity in the language of a general liability exclusion; therefore, summary judgment was precluded because it was susceptible to more than one reason-

able construction. Parker v. Southern Farm Bureau Cas. Ins. Co., 104 Ark. App. 301, 292 S.W.3d 311 (2009).

Justiciable Controversy.

Declaratory relief was proper in appellants' action to have the Arkansas Check-Cashers Act declared unconstitutional because a justiciable controversy was present between appellants and the Arkansas State Board of Collection Agencies as to the implementation, application, and effect of the Act. McGhee v. Ark. State Bd. of Collection Agencies, 375 Ark. 52, 289 S.W.3d 18 (2008).

Circuit court did not err in denying declaratory relief to a tobacco products manufacturer where it sought declaratory relief on events only hypothetical in nature and, therefore, the manufacturer lacked standing because no justiciable controversy existed. McLane Southern, Inc. v. Ark. Tobacco Control Bd., 2010 Ark. 498, 375 S.W.3d 628 (2010).

Because the operator failed to present a justiciable controversy under this section, the declaratory judgment in its favor was not proper; the requested declaratory relief regarding any alleged due-process violations, which were based upon the lack of a hearing, was moot, and the circuit court erred in granting the operator's motion for summary judgment. Ark. Dep't of Human Servs. v. Civitan Ctr., Inc., 2012 Ark. 40, 386 S.W.3d 432 (2012).

Court did not err in concluding that the business was not entitled to declaratory relief, because there was no existing legal controversy, when the business sought a declaration that its conduct (sweepstakes promotion) was legal and not subject to prosecution, and it was apparent the business was seeking an advisory opinion rather than the resolution of an actual controversy; courts did not sit for the purpose of determining speculative and abstract questions of law or laying down rules for future conduct. Cancun Cyber Cafe & Bus. Ctr., Inc. v. City of N. Little Rock, 2012 Ark. 154, — S.W.3d — (2012).

Circuit court's determination that Ark. Code Ann. §§ 25-19-104 and 25-19-106 were unconstitutional was improper because declaratory relief was inappropriate under this section as appellees did not yet have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state's Freedom of Information Act rather than resolution of an actual controversy. McCutchen v. City of Fort Smith, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

Mortgages.

Where the legal description for a mortgage only specifically listed one of two lots, the mortgagee's claim that the proper interpretation of the mortgage was that it included both lots was not procedurally barred by § 18-50-116(d)(2)(B) as (1) § 16-111-103 gave courts the power to declare rights, status, and other legal relations whether or not relief was or could have been claimed, (2) this section provided that the mortgagee could obtain a declaration of its rights under the mortgage, and (3) because no third parties were involved, no individuals not a party to the action were prejudiced by allowing the mortgagee to proceed in obtaining an interpretation of the mortgage. Acuff v. CitiMortgage, Inc., — F. Supp.2d —, 2006 U.S. Dist. LEXIS 67978 (E.D. Ark. Sept. 21, 2006).

Municipal Ordinances.

Motion to dismiss for failure to state a claim was improperly granted because a complaint filed by a lessor and a lessee sufficiently alleged that their rights or other legal relations were affected by Avoca, Ark., Ordinance No. 69 where a town was making demands regarding the removal of billboards; therefore, the lessor and the lessee were entitled to declaratory relief under this section. They were arguing that the town lacked power to regulate the billboards at issue. Statewide Outdoor Adver., LLC v. Town of Avoca, 104 Ark. App. 10, 289 S.W.3d 111 (2008).

Rights of Third Parties.

In a property owner's suit to decide which of two public entities had the right to set a sewer connection fee, the owner had standing to seek a declaratory judgment because: (1) the owner was a beneficiary of a contract between the entities, and (2) under this section, any person (even a non-beneficiary) whose legal relations were affected by a contract could obtain a declaration of legal relations under the contract. McAlmont Suburban Sewer Improvement Dist. No. 242 v. McCain-Hwy. 161, 99 Ark. App. 431, 262 S.W.3d 185 (2007).

Cited: Weaver v. Collins, 2010 Ark. App. 707, 379 S.W.3d 582 (2010).

16-111-106. Parties.

CASE NOTES

Analysis

In General.
Counterclaim.
Parties in Interest.

In General.

Declaratory relief was not the proper mechanism to determine if an individual's son had a claim for emotional distress after witnessing the death of his sister, who was involved in an accident with the driver, the insurer's insured, as the relationship between the insurer and the insured had no bearing the potential claim by the individual's son. Hardy v. United Servs. Auto. Ass'n, 95 Ark. App. 48, 233 S.W.3d 165 (2006).

Counterclaim.

When appellant law firm nonsuited its Freedom of Information Act claim under § 25-19-105, the circuit court did not err in permitting appellees, several doctors, an attorney, and a hospital, to move forward on their counterclaim. Under Ark. R. Civ. P. 41(a)(3), a defendant has the right to pursue a counterclaim even though the plaintiff has dismissed its original claim. Harrill & Sutter, PLLC v. Farrar, 2012 Ark. 180, — S.W.3d — (2012).

Parties in Interest.

State of Arkansas, through the Arkansas Attorney General and the Prosecuting Attorney for the State of Arkansas, had standing to appeal the dismissal of school district's action for the implementation of an additional levy of 7.55 mills because the state had been named as a party and a constitutional question was at issue. Beebe v. Fountain Lake Sch. Dist., 365 Ark. 536, 231 S.W.3d 628 (2006).

Where child's biological father was denied the right to consent to his child's adoption and claimed that the Arkansas adoption statutes violated his right to due process, the state had a right to intervene. Escobedo v. Nickita, 365 Ark. 548, 231 S.W.3d 601 (2006).

Cited: Osborne v. Bekaert Corp., 97 Ark. App. 147, 245 S.W.3d 185 (2006); Parker v. Southern Farm Bureau Cas. Ins. Co., 104 Ark. App. 301, 292 S.W.3d 311 (2009).

16-111-107. Jury trial.

CASE NOTES

Cited: Crawford v. Cashion, 2010 Ark. 124, 361 S.W.3d 268 (2010).

16-111-109. Review.

CASE NOTES

Cited: Poff v. Peedin, 2010 Ark. App. 365, 374 S.W.3d 879 (2010).

16-111-111. Costs.

CASE NOTES

Costs Awarded.

Statutory attorney's fees under § 16-22-308 were not available in an action brought under the Declaratory Judgment Act; however, costs were available under this section. Hanners v. Giant Oil Co. of Ark., Inc., 373 Ark. 418, 284 S.W.3d 468 (2008).

CHAPTER 112

HABEAS CORPUS

Subchapter 1 — Appeals — New Scientific Evidence

16-112-101. Procedure.

CASE NOTES

Analysis

Writ Denied.
Written Findings.

Writ Denied.

Appellant sentenced to 540 months' incarceration for manufacturing a controlled substance, two counts of possession of drug paraphernalia with the intent to manufacture methamphetamine, and failure to appear was not entitled to proceed with an appeal of the decision denying his petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-112-123, because his allegations did not establish that the commitment was facially invalid; and his ineffective assistance of counsel and due process claims were not cognizable in a petition for writ of habeas corpus. The trial court was not without jurisdiction to accept appellant's guilty plea for the charges of possession of drug paraphernalia with intent to manufacture methamphetamine, as it was not a lesser-included offense of manufacturing methamphetamine. McHaney v. Hobbs, 2012 Ark. 361, — S.W.3d — (2012).

Trial court did err in denying appellant's petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-101-123, because he did not establish that the trial court lacked jurisdiction by virtue of a defective information. Murry v. Hobbs, 2013 Ark. 29, — S.W.3d — (2013).

Trial court did err in denying appellant's petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-101-123, because he did not establish that the trial court lacked jurisdiction by virtue of a defective information. Murry v. Hobbs, 2013 Ark. 29, — S.W.3d — (2013).

Written Findings.

Circuit court committed no error if it did not make written findings to support its decision denying appellant's petition for a writ of habeas corpus because the statutes relating to habeas-corpus proceedings that were not filed under Act 1780 contained no such requirement. Bradford v. State, 2011 Ark. 494, — S.W.3d — (2011).

16-112-102. Officers permitted to issue.

CASE NOTES

Analysis

Federal Habeas Relief.
Review.

Federal Habeas Relief.

Although the filing of state habeas corpus petitions pursuant to subdivision (a)(1) of this section qualified for statutory tolling under 28 U.S.C.S. § 2244(d)(2), such petitions still had to be properly filed. Petitioner inmate's first two state habeas petitions did not have the effect of statutorily tolling the one year statute of limitations set out in § 2244(d)(1)(A) because they were not "properly filed," as they were filed in the wrong state circuit court, but his third habeas petition did statutorily toll the limitations period while the habeas proceedings were pending because that third habeas petition was properly and timely filed in the correct state court. Ben-Yah v. Norris, 570 F. Supp. 2d 1086 (E.D. Ark. 2008).

Review.

Circuit court erred by denying appellant juvenile's petition for writ of habeas corpus; because he was only fourteen years old when he committed capital-murder and aggravated-robbery, his mandatory sentence of life imprisonment without parole violated the Eighth Amendment, U.S. Const. amend. VIII. On review, the Supreme Court of Arkansas issued the writ pursuant to subdivision (a)(1) of this section. Jackson v. Norris, 2013 Ark. 175, — S.W.3d — (2013).

16-112-103. Petition.

CASE NOTES

Analysis

Actual Innocence.
Denial of Petition.
Petition Denied Without Hearing.
Detention Without Lawful Authority.
Jurisdiction.
Petition Denied Without Hearing.
Sufficiency of Petition.

Actual Innocence.

Where appellant gave the police a statement in which he admitted shooting the murder victim, appellant failed to show that DNA testing of blood splatter would have proved that he was actually innocent of the crime as required by subdivision (a)(1) of this section. The trial court did not err by denying his petition to vacate or set-side judgment pursuant to § 16-112-201 et seq. Leaks v. State, 371 Ark. 581, 268 S.W.3d 866 (2007).

Denial of Petition.

In a capital murder case, as defendant failed to show the conviction was invalid on its face or that the trial court lacked jurisdiction, the trial court properly denied his petition for writ of habeas corpus; defendant's assertion that his guilty plea was invalid should have been raised in a motion for postconviction relief under Ark. R. Crim. P. 37.1 as this issue required the kind of factual inquiry that went beyond the facial validity of the commitment. Friend v. Norris, 364 Ark. 315, 219 S.W.3d 123 (2005).

Where the trial court accepted appellant's plea for capital-felony murder on a Sunday in violation of § 16-10-114, the statutory violation did not affect the trial court's jurisdiction over the matter; further, a petition for writ of habeas corpus was not the proper method with which to claim a statutory violation, rather, appellant's argument should have been raised on direct appeal. Noble v. Norris, 368 Ark. 69, 243 S.W.3d 260 (2006).

Circuit court did not err in dismissing the inmate's petition for habeas corpus where although the inmate's original judgment and commitment order was erroneous, the sentencing court had jurisdiction to amend the order to reflect the correct statute; the inmate failed to show that commitment was invalid and did not establish habeas corpus under § 16-112-

103. Baker v. Norris, 369 Ark. 405, 255 S.W.3d 466 (2007).

Where appellant was denied habeas relief and his appeal was dismissed, he stated no valid reason for the court to grant his motion for reconsideration. Appellant's constitutional challenge arising from the alleged invalidity of his arrest did not result in an invalid conviction and required a factual inquiry that was improper in a habeas proceeding under subdivision (a)(1) of this section; appellant made only a general due process argument that he was unlawfully imprisoned, and cited no authority for the proposition that his sentence was illegal. Russell v. Norris, 2009 Ark. 472, — S.W.3d — (2009).

Circuit court did not err in denying appellant's petition for a writ of habeas corpus because to the extent that appellant would directly challenge his conviction, the sentence that he received for the conviction had since expired; to the extent that appellant would raise the issue of validity of his sentence concerning its use to enhance his life sentence in his prior conviction, he failed to raise a claim that would support relief. Bradford v. State, 2011 Ark. 494, — S.W.3d — (2011).

Circuit court did not err in denying appellant's petition for a writ of habeas corpus because his claims that some of the judgments used to enhance his sentence were invalid did not constitute a challenge to the jurisdiction of the trial court over the charge or to the facial validity of the commitment order; therefore, appellant failed to present a claim that would support habeas corpus relief. Bradford v. State, 2011 Ark. 494, — S.W.3d — (2011).

Circuit court did not err in denying appellant's petition for a writ of habeas corpus because although appellant argued that he was still being held by the Arkansas Department of Correction (ADC), even though his conviction was reversed on appeal, the ADC's records did not reflect that appellant was incarcerated pursuant to his conviction; appellant's challenge to the conviction, even if it was valid at the time the petition was filed, was moot because any judgment rendered would have no practical legal effect upon an existing legal controversy. Bradford v. State, 2011 Ark. 494, — S.W.3d — (2011).

Denial of writ of habeas corpus was proper, because allegations of ineffective assistance of counsel were not cognizable in a habeas proceeding, none of the claims called into question the trial court's jurisdiction or the validity of the judgment-and-commitment order, and neither the question concerning the validity of the agreement between the petitioner and his attorney for representation nor the assertions of trial error were sufficient to warrant granting the writ. Thomas v. State, 2012 Ark. 79, — S.W.3d — (2012).

Petitioner was not entitled to mandamus relief (seeking a ruling on the motion for extension of time to lodge the record on appeal), because the petitioner filed his petition to vacate and or to set aside the judgment in the circuit court nearly five years after the date of his conviction. Subdivision (10)(B) of this section mandated that there shall be a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and since the DNA testing was available at the time of his trial, the petitioner's attempt to rebut the presumption against timeliness failed, and nothing in the record suggested that the prosecuting attorney was properly served and the petition for writ of mandamus did not allege that the prosecuting attorney was served. Mitchael v. State, 2012 Ark. 256, — S.W.3d — (2012).

Dismissal of the petition for writ of habeas corpus was proper, because the applicant did not present a claim that could be resolved through a habeas proceeding, when the issue was one concerning an excessive sentence and not an illegal sentence, and the majority of the applicant's claims were assertions of trial error that did not implicate the facial validity of the judgment or the jurisdiction of the trial court. Bliss v. Hobbs, 2012 Ark. 315, — S.W.3d — (2012).

Defendant argued that he was not told, prior to entering his guilty plea, that this section would apply to his sentence, however, he failed to show how this allegation would make the judgment against him facially invalid or to support his claim to believe that he was illegally detained under subdivision (a)(1) of this section, all claims of ineffective assistance had to be brought under a timely Ark. R. Crim. P. 37.1 petition, and a petition for writ of habeas corpus was not a substitute for a timely petition for postconviction relief. Smith v. Hobbs, 2012 Ark. 360, — S.W.3d — (2012).

Appellant sentenced to 540 months' incarceration for manufacturing a controlled substance, two counts of possession of drug paraphernalia with the intent to manufacture methamphetamine, and failure to appear was not entitled to proceed with an appeal of the decision denying his petition for writ of habeas corpus, because his allegations did not call into question the trial court's jurisdiction or establish that the commitment was facially invalid under subdivision (a)(1) of this section. The trial court was not without jurisdiction to accept appellant's guilty plea for the charges of possession of drug paraphernalia with intent to manufacture methamphetamine, as it was not a lesser-included offense of manufacturing methamphetamine. McHaney v. Hobbs, 2012 Ark. 361, — S.W.3d — (2012).

Appellant filed a petition for writ of habeas corpus that challenged the judgment that imposed an aggregate sentence of 1080 months' imprisonment for possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. The trial court did not err by denying appellant's petition, because he failed to provide probable cause that he was illegally detained as required by subdivision (a)(1) of this section and presented only conclusory allegations to support his claim that his sentence was improperly enhanced using an out-of-state conviction. Darrough v. State, 2013 Ark. 28, — S.W.3d — (2013).

Appellant filed a petition for writ of habeas corpus that challenged the judgment that imposed an aggregate sentence of 1080 months' imprisonment for possession of cocaine with intent to deliver and possession of marijuana with intent to deliver. The trial court did not err by denying appellant's petition, because he failed to provide probable cause that he was illegally detained as required by subdivision (a)(1) of this section and presented only conclusory allegations to support his claim that his sentence was improperly enhanced using an out-of-state conviction. Darrough v. State, 2013 Ark. 28, — S.W.3d — (2013).

Trial court did err in denying appellant's petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-101-123, because he did not establish that the trial court lacked jurisdiction under subdivision (a)(1) of this section by virtue of a defective information. Murry v. Hobbs, 2013 Ark. 29, — S.W.3d — (2013).

Trial court did err in denying appellant's petition for writ of habeas corpus pursuant to §§ 16-112-101 to 16-101-123, because he did not establish that the trial court lacked jurisdiction under subdivision (a)(1) of this section by virtue of a defective information. Murry v. Hobbs, 2013 Ark. 29, — S.W.3d — (2013).

Habeas corpus relief was not warranted based on an inmate's allegations of a conflict of interest, a coerced confession, speedy-trial violations, prosecutorial and judicial misconduct, and due process violations because they did not implicate the facial validity of the judgment or the jurisdiction of the trial court; moreover, claims of ineffective assistance of counsel were not cognizable in a habeas proceeding. In addition, the inmate's claim of incompetency at the time she entered her plea, even if cognizable, was not support by a factual basis, and her claims that a sentence imposed upon the revocation of probation was an illegal second sentence or that it was illegal due to a speedy trial violation were rejected. Murphy v. State, 2013 Ark. 155, — S.W.3d — (2013).

Petition Denied Without Hearing.

Trial court did not err in denying a prisoner's petition for habeas corpus without an evidentiary hearing because the prisoner failed to demonstrate that his attempted murder conviction was facially invalid or that the trial court was without jurisdiction. His claim that he was not competent to stand trial could have been raised in the original trial or appeal. Henderson v. State, 2010 Ark. 30, — S.W.3d — (2010).

Detention Without Lawful Authority.

Habeas corpus relief was granted to the extent that a trial court imposed drug treatment as a condition of imprisonment because this was an illegal sentence; § 5-64-401(a)(1)(A)(i) did not authorize this condition when an inmate's probation was revoked. Murphy v. State, 2013 Ark. 155, — S.W.3d — (2013).

Jurisdiction.

Inmate's pro se petition seeking release under subsection (a) of this section could not be granted by the circuit court in which he filed his motion for postconviction relief because the inmate was not in

custody in that court's jurisdiction. Hill v. State, 2010 Ark. 102, — S.W.3d — (2010).

Petition Denied Without Hearing.

Circuit court did not err by failing to conduct a hearing when it denied appellant's writ of habeas corpus petition because appellant failed to demonstrate probable cause for the issuance of the writ pursuant to subdivision (A)(1) of this section; the records of the Arkansas Department of Correction did not reflect that appellant was incarcerated pursuant to his conviction, and appellant's challenge to the conviction, even if it was valid at the time the petition was filed, was moot because any judgment rendered would have no practical legal effect upon an existing legal controversy. Bradford v. State, 2011 Ark. 494, — S.W.3d — (2011).

Habeas corpus relief was not warranted under §§ 16-112-201 to 16-112-208 because, even if appellant's deoxyribonucleic acid and fingerprints were not found on a mask, his actual innocence would not have been established in light of the evidence as a whole where a witness recognized appellant's clothing and voice; no evidentiary hearing was required because the petition, files, and records showed that appellant was entitled to no relief. Moreover, appellant was not entitled to relief on the grounds of errors made by the trial court and ineffectiveness of counsel because petitions under §§ 16-112-201 to 16-112-208 were limited to claims related to scientific testing of evidence, and appellant failed to rebut the presumption against timeliness where the testing suggested by appellant was either available at the time of his trial or not shown to be substantially more probative than technology available at the time. King v. State, 2013 Ark. 133, — S.W.3d — (2013).

Sufficiency of Petition.

Because defendant raised no argument that demonstrated a jurisdictional defect in the proceeding against defendant or that defendant's commitment was invalid, defendant did not state a basis to warrant issuance of a writ of habeas corpus under subdivision (a)(1) of this section; consequently, the circuit court did not err in denying the relief sought. Randolph v. State, 2011 Ark. 510, — S.W.3d — (2011).

Inmate who pleaded guilty to first-degree murder failed to state a claim for habeas corpus relief based on the murder taking place in a county other than the county of the trial court, because the evidence indicated that the inmate and his codefendant planned the murder and picked the victim up in Craighead County, where the trial was held. Bryant v. May, 2013 Ark. 168, — S.W.3d — (2013).

Cited: Davis v. State, 366 Ark. 401, 235 S.W.3d 902 (2006); Carter v. Norris, 367 Ark. 360, 240 S.W.3d 124 (2006).

16-112-105. Form of writ.

CASE NOTES

Jurisdiction.

Where appellant was incarcerated in Lee County, Arkansas, for rape and burglary, the Circuit Court of Hot Spring County did not have personal jurisdiction to issue a writ of habeas corpus for his release under § 16-112-105. The circuit court did not err when it declined to grant relief on appellant's motion for reconsideration. Lukach v. State, 369 Ark. 475, 255 S.W.3d 832 (2007).

16-112-115. Discharge, remand, admission to bail, or other order — Costs.

CASE NOTES

Writ Granted.

Circuit court erred by denying appellant juvenile's petition for writ of habeas corpus; because he was only fourteen years old when he committed capital-murder and aggravated-robbery, his mandatory sentence of life imprisonment without parole violated the Eighth Amendment, U.S. Const. amend. VIII. On review, the Supreme Court of Arkansas

issued the writ pursuant to this section. Jackson v. Norris, 2013 Ark. 175, — S.W.3d — (2013).

Subchapter 2 — Other Relief — New Scientific Evidence

16-112-201. Writ of Habeas Corpus — New scientific evidence.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

Analysis

In General.
Applicability.
Denial of Petition.
Grounds for Relief.
Procedure.
Relief Denied.
Scientific Evidence.

In General.

Because habeas petitioner had not sought postjudgment relief from the circuit court on the basis that he had been denied due process of law by the court's alleged failure to follow several procedural requirements, including delivering a copy of the petition to the prosecuting attorney and to the Attorney General, the Court was precluded from addressing the appeal as the due-process claims were not preserved for appellate review. Randall v. State, 368 Ark. 279, 244 S.W.3d 662 (2006).

Applicability.

Where the Arkansas Supreme Court reversed the denial of defendant's petition for postconviction relief seeking to retest certain DNA evidence and ordered that certain negroid hairs introduced into evidence be retested, but on remand the trial court instead entered an order finding that the state had complied with the requirement because the hairs had been retested in preparation for the second trial, the trial court had complied with the Supreme Court's mandate. Johnson v. State, 366 Ark. 390, 235 S.W.3d 872 (2006).

Denial of Petition.

Dismissal of the petition for writ of habeas corpus was proper, because the applicant did not present a claim that could be resolved through a habeas proceeding, when the issue was one concerning an excessive sentence and not an illegal sentence, and the majority of the applicant's claims were assertions of trial error that did not implicate the facial validity of the judgment or the jurisdiction of the trial court. Bliss v. Hobbs, 2012 Ark. 315, — S.W.3d — (2012).

Grounds for Relief.

Circuit court did not err by denying appellant's petition to vacate and/or set aside the judgment convicting him of murder under 2001 Ark. Acts 1780 (codified as §§ 16-112-201 to 16-112-208), because his claims alleging prosecutorial misconduct, due process, equal protection, and denial of counsel violations were not cognizable in a petition under 2001 Ark. Acts 1780. Foster v. State, 2013 Ark. 61, — S.W.3d — (2013).

Procedure.

Inmate's requests for scientific testing were barred by his previous petitions under the law of the case doctrine. Hill v. State, 2010 Ark. 102, — S.W.3d — (2010).

Inmate's motion under §§ 16-112-201 to -208 for additional forensic testing of evidence that had already been determined, on prior similar motions, to have low probative value and to be unlikely to substantially advance his claim of actual innocence of an armed robbery, was properly summarily denied by the trial court. Cooper v. State, 2013 Ark. 180, — S.W.3d — (2013).

Relief Denied.

Appellant convicted and sentenced to 300 months' imprisonment for rape did not prove a basis for a writ of habeas corpus under this section with his claim that he had new scientific evidence to prove his innocence because his assertions did not challenge the jurisdiction of the court or the facial validity of the judgment-and-commitment order. Girley v. Hobbs, 2012 Ark. 447, — S.W.3d —, 2012 Ark. LEXIS 471 (Nov. 29, 2012).

Scientific Evidence.

Defendant's petition did not comport with the prevailing rules of procedure and his appeal was dismissed as he merely concluded that he was innocent and wished to have testing performed to prove that fact; defendant failed to state the basis for proving his innocence with scientific testing, identify the evidence to be tested and specify the scientific tests to be conducted on the evidence, and he made no showing that good cause prevented him from filing his petition within 36 months from the date of his conviction. Douthitt v. State, 366 Ark. 579, 237 S.W.3d 76 (2006).

Where appellant gave the police a statement in which he admitted shooting the murder victim, appellant failed to show that DNA testing of blood splatter would have proved that he was actually innocent of the crime as required by § 16-112-103(a)(1). The trial court did not err by denying his petition to vacate or set-side the judgment pursuant to § 16-112-201 et seq. Leaks v. State, 371 Ark. 581, 268 S.W.3d 866 (2007).

Whether or not the court correctly determined identity was not at issue as required to grant a motion for testing under § 16-112-202, appellant, an inmate, was not entitled to relief. More fundamentally, he failed to show a basis to commence a proceeding for the writ under either basis set out in subsection (a) of this section. Guy v. State, 2011 Ark. 305, — S.W.3d — (2011).

Denial of appellant's, an inmate's, petition for habeas corpus under §§ 16-112-201 to 16-112-208 was appropriate because he had sought and received DNA testing, the results of which were inconclusive and the Arkansas State Crime Laboratory did not have a duty to perform, or direct to be performed, additional mitochondrial DNA testing, § 16-112-208(b). Pitts v. State, 2011 Ark. 322, — S.W.3d — (2011).

Petitioner was not entitled to mandamus relief (seeking a ruling on the motion for extension of time to lodge the record on appeal), because the petitioner filed his petition to vacate and or to set aside the judgment in the circuit court nearly five years after the date of his conviction. Section 16-112-202(10)(B) mandated that there shall be a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and since the DNA testing was available at the time of his trial, the petitioner's attempt to rebut the presumption against timeliness failed, and nothing in the record suggested that the prosecuting attorney was properly served and the petition for writ of mandamus did not allege that the prosecuting attorney was served. Mitchael v. State, 2012 Ark. 256, — S.W.3d — (2012).

Circuit court did not err by denying appellant's petition for DNA testing under 2001 Ark. Acts 1780 (codified as §§ 16-112-201 to 16-112-208), because it was filed 44 months after entry of the judgment convicting him of murder and he failed to rebut the presumption against timeliness under § 16-112-202(10). Foster v. State, 2013 Ark. 61, — S.W.3d — (2013).

Habeas corpus relief was not warranted under §§ 16-112-201 to 16-112-208 because, even if appellant's deoxyribonucleic acid and fingerprints were not found on a mask, his actual innocence would not have been established in light of the evidence as a whole where a witness recognized appellant's clothing and voice; no evidentiary hearing was required because the petition, files, and records showed that appellant was entitled to no relief. Moreover, appellant was not entitled to relief on the grounds of errors made by the trial court and ineffectiveness of counsel because petitions under §§ 16-112-201 to 16-112-208 were limited to claims related to scientific testing of evidence, and appellant failed to rebut the presumption against timeliness where the testing suggested by appellant was either available at the time of his trial or not shown to be substantially more probative than technology available at the time. King v. State, 2013 Ark. 133, — S.W.3d — (2013).

In appellant's rape case, a court properly denied DNA testing of other hairs

found at the scene because genetic material from two individuals was discovered, with the major component attributable to appellant, and another person's hair at the scene would in no way preclude appellant's having committed the offenses. Pankau v. State, 2013 Ark. 162, — S.W.3d — (2013).

Cited: Davis v. State, 366 Ark. 401, 235 S.W.3d 902 (2006); Aaron v. State, 2010 Ark. 249, — S.W.3d — (2010); Hill v. State, 2012 Ark. 204, — S.W.3d — (2012).

16-112-202. Form of motion.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

Analysis

Applicability.
Petition Denied and Dismissed.
Postconviction DNA Testing.
Prima Facie Case.
Scientific Testing.
Time Limitations.

Applicability.

Defendant's petition did not comport with the prevailing rules of procedure and his appeal was dismissed as he merely concluded that he was innocent and wished to have testing performed to prove that fact; defendant failed to state the basis for proving his innocence with scientific testing, identify the evidence to be tested and specify the scientific tests to be conducted on the evidence, and he made no showing that good cause prevented him from filing his petition within 36 months from the date of his conviction.Douthitt v. State, 366 Ark. 579, 237 S.W.3d 76 (2006).

Pursuant to subdivision (10) of this section, defendant's petition for writ of habeas corpus and motion for testing was not timely; defendant's requests for testing did not point to any new technology that was more probative than what was available at trial and each of the items that he sought to have tested was available at the time of his trial. Scott v. State, 372 Ark. 587, 279 S.W.3d 66 (2008).

Petition Denied and Dismissed.

Defendant's motion for scientific testing was properly denied because the motion was filed almost 16 years after the judgment was entered, but defendant failed to establish in the motion a rebuttal of the presumption arising from one of the five grounds listed in subdivision (10) of this section; the record did not support defendant's claim that he alleged his incompetence in the motion for testing or the proposed amendments and neither the motions nor the proposed amendments referenced the presumption against timeliness, any cause for delay, or incompetence of any kind. Defendant did not identify newly discovered evidence to be tested and failed to clearly identify the evidence that he did wish to be tested and, despite defendant's assertion, he did not include in the motion a showing that a new method of technology was available that was substantially more probative than prior testing. Aaron v. State, 2010 Ark. 249, — S.W.3d — (2010).

Petitioner was not entitled to mandamus relief (seeking a ruling on the motion for extension of time to lodge the record on appeal), because the petitioner filed his petition to vacate and or to set aside the judgment in the circuit court nearly five years after the date of his conviction. Subdivision (10)(B) of this section mandated that there shall be a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and since the DNA testing was available at the time of his trial, the petitioner's attempt to rebut the presumption against timeliness failed, and nothing in the record suggested that the prosecuting attorney was properly served and the petition for writ of mandamus did not allege that the prosecuting attorney was served. Mitchael v. State, 2012 Ark. 256, — S.W.3d — (2012).

Postconviction DNA Testing.

Where appellant gave the police a statement in which he admitted shooting the murder victim, the trial court did not err by denying his petition to vacate or set-side judgment pursuant to § 16-112-201 et seq. Appellant could not prove that the identity of the perpetrator was at issue during the investigation or prosecution of the offense, as required by subdivision (7) of this section. Leaks v. State, 371 Ark. 581, 268 S.W.3d 866 (2007).

Appellant's motion for retesting of DNA on a sock he used to clean himself with after raping a 15-year-old girl was properly denied because appellant failed to satisfy the predicate requirement for such retesting: that his identity have been at issue, as required by subdivision (7) of this section. The victim and other evidence clearly identified appellant as the only possible rapist. Strong v. State, 2010 Ark. 181, 372 S.W.3d 758 (2010).

In appellant's rape case, a court properly denied DNA testing of other hairs found at the scene because genetic material from two individuals was discovered, with the major component attributable to appellant, and another person's hair at the scene would in no way preclude appellant's having committed the offenses. Pankau v. State, 2013 Ark. 162, — S.W.3d — (2013).

Prima Facie Case.

Inmate's motion for scientific testing was properly denied by the trial court because the motion was not made within 36 months of defendant's original conviction and the inmate had not provided any evidence to rebut the presumption that the petition was not timely; there was no showing that incompetence contributed to the delay, that the evidence to be tested was newly discovered, or that a new method of technology was available. Brown v. State, 367 Ark. 315, 239 S.W.3d 481 (2006).

Scientific Testing.

Prisoner's petition to vacate and set aside the judgment against him was properly denied as the petition failed to identify a generally accepted scientific testing method that would have produced new and non-cumulative evidence materially relevant to prisoner's assertion of actual innocence; the prisoner failed to reveal in his pleadings a generally accepted scientific method that could have proved that the victims were virgins after July 12, 1997, based on blood, tissue, or other samples taken nearly a decade later and, by the prisoner's own admission, the requested scientific testing would have merely duplicated medical records in existence at the time of his conviction. Davis v. State, 366 Ark. 401, 235 S.W.3d 902 (2006).

State inmate's federal habeas claim that the state courts violated his federal constitutional rights to due process and to present a complete defense by denying his postconviction petition to require additional fingerprint testing of the gun found near victim's body pursuant to the new state habeas cause of action under subdivision (c)(1)(B) of this section was procedurally barred because the inmate raised no issue of federal constitutional law and cited no federal authority in the state courts, and even if it had been raised, the inmate cited no Supreme Court decision clearly establishing that the right to present a complete defense applies to postconviction proceedings, or that due process includes the right to postconviction testing using new technological advances; the district court also did not abuse its discretion by not ordering the fingerprint testing he requested under R. Governing § 2254 Cases U.S. Dist. Cts. 6(a) because the federal claim was procedurally barred, and the state courts' decision that the inmate failed to show "more than a slight chance" that additional testing would yield a favorable result was not based on an unreasonable determination of the facts. Rucker v. Norris, 563 F.3d 766 (8th Cir. 2009), cert. denied, — U.S. —, 130 S. Ct. 401, 175 L. Ed. 2d 275 (2009).

Petitioner seeking scientific testing of crime evidence from his 21-year-old rape conviction did not offer a factual basis for his claim that the evidence was available with an unbroken chain of custody as required by subdivision (b)(2) of this section; therefore, the trial court did not err in finding that his petition was a successive petition and subject to summary denial under § 16-112-205(d). Carter v. State, 2010 Ark. 29, — S.W.3d — (2010).

Whether or not the court correctly determined identity was not at issue as required to grant a motion for testing under this section, appellant, an inmate,

was not entitled to relief. More fundamentally, he failed to show a basis to commence a proceeding for the writ under either basis set out in § 16-112-201(a). Guy v. State, 2011 Ark. 305, — S.W.3d — (2011).

Time Limitations.

Under subdivision (10)(B) of this section, there was a rebuttable presumption of untimeliness for a petition for DNA testing filed more than 36 months after a conviction. The circuit court correctly determined that the petition was untimely because the petition failed to establish any of the enumerated grounds for rebutting the presumption. Cooper v. State, 2012 Ark. 123, — S.W.3d — (2012).

Trial court did not err in dismissing defendant's petition for postconviction relief because defendant's petition failed to establish the required rebuttal of the presumption of untimeliness, pursuant to subdivision (10)(B) of this section, and, therefore, failed to provide a basis for the court to assume jurisdiction under §§ 16-112-201 to 16-112-208. Hill v. State, 2012 Ark. 204, — S.W.3d — (2012).

Habeas corpus petitioner failed to rebut the presumption against timeliness pursuant to subdivision (10)(B) of this section; while petitioner alleged that petitioner was placed in administrative segregation, no other reference was made to the nearly five years that elapsed between petitioner's conviction and the filing of the petition. Garner v. State, 2012 Ark. 271, — S.W.3d — (2012).

Circuit court did not err by denying appellant's petition for DNA testing under 2001 Ark. Acts 1780 (codified as §§ 16-112-201 to 16-112-208), because it was filed 44 months after entry of the judgment convicting him of murder and he failed to rebut the presumption against timeliness under subdivision (10) of this section. Foster v. State, 2013 Ark. 61, — S.W.3d — (2013).

Habeas corpus relief was not warranted under §§ 16-112-201 to 16-112-208 because, even if appellant's deoxyribonucleic acid and fingerprints were not found on a mask, his actual innocence would not have been established in light of the evidence as a whole where a witness recognized appellant's clothing and voice; no evidentiary hearing was required because the petition, files, and records showed that appellant was entitled to no relief. Moreover, appellant was not entitled to relief on the grounds of errors made by the trial court and ineffectiveness of counsel because petitions under §§ 16-112-201 to 16-112-208 were limited to claims related to scientific testing of evidence, and appellant failed to rebut the presumption against timeliness where the testing suggested by appellant was either available at the time of his trial or not shown to be substantially more probative than technology available at the time. King v. State, 2013 Ark. 133, — S.W.3d — (2013).

16-112-203. Contents of motion.

CASE NOTES

In General.

Because habeas petitioner had not sought postjudgment relief from the circuit court on the basis that he had been denied due process of law by the court's alleged failure to follow several procedural requirements, including delivering a copy of the petition to the prosecuting attorney and to the Attorney General, the Court was precluded from addressing the appeal as the due-process claims were not preserved for appellate review. Randall v. State, 368 Ark. 279, 244 S.W.3d 662 (2006).

Defendant's petition did not comport with the prevailing rules of procedure and his appeal was dismissed as he merely concluded that he was innocent and wished to have testing performed to prove that fact; defendant failed to state the basis for proving his innocence with scientific testing, identify the evidence to be tested and specify the scientific tests to be conducted on the evidence, and he made no showing that good cause prevented him from filing his petition within 36 months from the date of his conviction. Douthitt v. State, 366 Ark. 579, 237 S.W.3d 76 (2006).

Cited: Davis v. State, 366 Ark. 401, 235 S.W.3d 902 (2006).

16-112-204. Other pleadings.

CASE NOTES

In General.

Because habeas petitioner had not sought postjudgment relief from the circuit court on the basis that he had been denied due process of law by the court's alleged failure to follow several procedural requirements, including delivering a copy of the petition to the prosecuting attorney and to the Attorney General, the Court was precluded from addressing the appeal as the due-process claims were not preserved for appellate review. Randall v. State, 368 Ark. 279, 244 S.W.3d 662 (2006).

While there was a mandatory response requirement in subsection (a) of this section for habeas corpus petitions seeking the scientific testing of crime evidence, there was no provision for a default judgment as in Ark. R. Civ. P. 55, and the trial court did not err in denying a petitioner's motion for a default judgment. The rules of civil procedure did not apply in the habeas proceeding. Carter v. State, 2010 Ark. 29, — S.W.3d — (2010).

16-112-205. Hearing.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

Analysis

Denial of Petition Without Hearing.
Denial Proper.

Denial of Petition Without Hearing.

Petitioner seeking scientific testing of crime evidence from his 21-year-old rape conviction did not offer a factual basis for his claim that the evidence was available with an unbroken chain of custody as required by § 16-112-202(b)(2); therefore, the trial court did not err in finding that his petition was a successive petition and subject to summary denial under subsection (d) of this section. Carter v. State, 2010 Ark. 29, — S.W.3d — (2010).

Defendant was entitled to an evidentiary hearing, as required under this section, on a motion for new trial, brought under the Arkansas DNA testing statutes, §§ 16-112-201 to 16-112-208, because the petition, the file, and the records of the proceeding did not conclusively show that defendant was entitled to no relief. Echols v. State, 2010 Ark. 417, 373 S.W.3d 892 (2010).

Habeas corpus relief was not warranted under §§ 16-112-201 to 16-112-208 because, even if appellant's deoxyribonucleic acid and fingerprints were not found on a mask, his actual innocence would not have been established in light of the evidence as a whole where a witness recognized appellant's clothing and voice; no evidentiary hearing was required because the petition, files, and records showed that appellant was entitled to no relief. Moreover, appellant was not entitled to relief on the grounds of errors made by the trial court and ineffectiveness of counsel because petitions under §§ 16-112-201 to 16-112-208 were limited to claims related to scientific testing of evidence, and appellant failed to rebut the presumption against timeliness where the testing suggested by appellant was either available at the time of his trial or not shown to be substantially more probative than technology available at the time. King v. State, 2013 Ark. 133, — S.W.3d — (2013).

Denial Proper.

Inmate's motion under §§ 16-112-201 to -208 for additional forensic testing of evidence that had already been determined, on prior similar motions, to have low probative value and to be unlikely to

substantially advance his claim of actual innocence of an armed robbery, was properly summarily denied by the trial court. Cooper v. State, 2013 Ark. 180, — S.W.3d — (2013).

16-112-207. Appointment of counsel — Latent fingerprinting services.

CASE NOTES

In General.

Because habeas petitioner had not sought postjudgment relief from the circuit court on the basis that he had been denied due process of law by the court's alleged failure to follow several procedural requirements, including delivering a copy of the petition to the prosecuting attorney and to the Attorney General, the Court was precluded from addressing the appeal as the due-process claims were not preserved for appellate review. Randall v. State, 368 Ark. 279, 244 S.W.3d 662 (2006).

Cited: Davis v. State, 366 Ark. 401, 235 S.W.3d 902 (2006); Douthitt v. State, 366 Ark. 579, 237 S.W.3d 76 (2006).

16-112-208. Testing procedures.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

CASE NOTES

Analysis

Conclusive Results.
Motion for New Trial.
No Constitutional Right.
Relief Properly Denied.

Conclusive Results.

Where it was undisputed that the results of a DNA test conclusively excluded three codefendants as the source of the DNA evidence tested, subsection (b) of this section was inapplicable and the trial court erred in denying one defendant's motion for new trial under that subsection. Echols v. State, 2010 Ark. 417, 373 S.W.3d 892 (2010).

Motion for New Trial.

Where defendant was convicted on three counts of capital murder and sentenced to death, subdivision (e)(3) of this section did not require defendant to present a compelling claim of actual innocence on a motion for new trial, brought under the Arkansas DNA testing statutes, §§ 16-112-201 to 16-112-208, but stated that defendant had to establish by compelling evidence that a new trial would result in an acquittal. Echols v. State, 2010 Ark. 417, 373 S.W.3d 892 (2010).

No Constitutional Right.

Court rejected defendant's argument that he had a constitutional right to additional testing under the due process clause of Ark. Const. Art. 2, § 8. When DNA test results matched the person requesting additional testing, it was not fundamentally unfair to refuse additional testing. Isom v. State, 2010 Ark. 496, 372 S.W.3d 809 (2010), cert. denied, Isom v. Arkansas, — U.S. —, — S. Ct. —, — L. Ed. 2d —, 2011 U.S. LEXIS 4749 (U.S. June 20, 2011).

Relief Properly Denied.

Circuit court did not abuse its discretion in denying defendant's postconviction request for additional DNA testing under subsection (b) of this section as an earlier postconviction DNA test did not exclude him as the source of the DNA evidence and further testing of third parties would not conclusively eliminate him as the source. Isom v. State, 2010 Ark. 496, 372 S.W.3d 809 (2010), cert. denied, Isom v. Arkansas, — U.S. —, — S. Ct. —, — L. Ed.

2d —, 2011 U.S. LEXIS 4749 (U.S. June 20, 2011).

Denial of appellant's, an inmate's, petition for habeas corpus under §§ 16-112-201 to 16-112-208 was appropriate because he had sought and received DNA testing, the results of which were inconclusive and the Arkansas State Crime Laboratory did not have a duty to perform, or direct to be performed, additional mitochondrial DNA testing under subsection (b) of this section. Pitts v. State, 2011 Ark. 322, — S.W.3d — (2011).

Cited: Hill v. State, 2012 Ark. 204, — S.W.3d — (2012).

CHAPTER 113

INJUNCTIONS

Subchapter 3 — Grant

16-113-306. Illegal or unauthorized taxes and assessments enjoined.

RESEARCH REFERENCES

ALR. What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act (28 USCS § 1341), Prohibiting Federal District Courts from Interfering with Assessment, Levy, or Collection of State Business Taxes. 31 A.L.R. Fed. 2d 237.

CASE NOTES

Federal Jurisdiction.

Giving a broad construction to the Tax Injunction Act's (TIA), 28 U.S.C.S. § 1341, use of "tax," access and hook-up fees for new installations of water and sewer services qualified as taxes for purposes of the TIA. Because homebuilders' action was to enjoin the assessment and collection of taxes, and because the homebuilders had a plain, speedy, and efficient remedy in the state courts via this section and § 16-111-103, the TIA barred federal jurisdiction over the illegal exaction claims based on Ark. Const., Art. 16, § 13 against a city, a utility, and a water and sewer commission, raised by the homebuilders. Northwest Ark. Home Builders Ass'n v. City of Rogers, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 19772 (W.D. Ark. Mar. 3, 2008).

CHAPTER 114

MALPRACTICE ACTIONS

SUBCHAPTER.

2. Actions for Medical Injury.

Subchapter 2 — Actions for Medical Injury

SECTION.

16-114-201. Definitions.

16-114-213. Sole remedy.

16-114-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Action for medical injury" means all actions against a medical care provider, whether based in tort, contract, or otherwise, to recover damages on account of medical injury as defined in this section;

(2) "Medical care provider" means a physician, certified registered nurse anesthetist, physician's assistant, nurse, optometrist, chiropractor, physical therapist, dentist, podiatrist, pharmacist, veterinarian, hospital, nursing home, community mental health center, psychologist, clinic, or not-for-profit home health care agency licensed by the state or otherwise lawfully providing professional medical care or services, or an officer, employee or agent thereof acting in the course and scope of employment in the providing of such medical care or medical services; and

(3) "Medical injury" or "injury" means any adverse consequences arising out of or sustained in the course of the professional services being rendered by a medical care provider to a patient or resident, whether resulting from negligence, error, or omission in the performance of such services; or from rendition of such services without informed consent or in breach of warranty or in violation of contract; or from failure to diagnose; or from premature abandonment of a patient or of a course of treatment; or from failure to properly maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.

History. Acts 1979, No. 709, § 1; A.S.A. 1947, § 34-2613; Acts 2013, No. 1196, §§ 2, 3.

A.C.R.C. Notes. Acts 2013, No. 1196, § 1, provided: "Intent — Limitation.

"(a) This act is intended to ensure that:

"(1) A person who suffers a medical injury has the opportunity to seek compensation to return to the state of health that he or she enjoyed before the medical injury; and

"(2) For any one (1) medical injury, a person is not compensated more than once.

"(b) This act is not intended to affect punitive damages."

Amendments. The 2013 amendment, in (1), substituted "all actions" for "any action" and added "as defined in this section"; and inserted "to a patient or resident" following "provider" in (3).

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

CASE NOTES

Medical Injury.

Husband's claims against a psychiatrist, a psychologist, and a clinic fell within the purview of the Arkansas Medical Malpractice Act as the claims involved the failure to properly diagnose, assess, and manage his wife's care and treatment. Dodd v. Sparks Reg'l Med. Ctr., 90 Ark. App. 191, 204 S.W.3d 579 (2005).

Summary judgment was properly awarded to a hospital in an action by appellants for negligent credentialing of a surgeon because the Arkansas Medical Malpractice Act, subdivision (3) of this

section, did not confer a cause of action for negligent credentialing as a "medical injury;" credentialing decisions did not involve a professional service, a doctor's treatment or order, or a matter of medical science related to specific patient care. Paulino v. QHG of Springdale, Inc., 2012 Ark. 55, 386 S.W.3d 462 (2012), rehearing denied, — S.W.3d —, 2012 Ark. LEXIS 133 (Ark. Mar. 15, 2012).

16-114-202. Applicability.

CASE NOTES

Medical Injury.

Husband's claims against a psychiatrist, a psychologist, and a clinic fell within the purview of the Arkansas Medical Malpractice Act as the claims involved the failure to properly diagnose, assess, and manage his wife's care and treatment. Dodd v. Sparks Reg'l Med. Ctr., 90 Ark. App. 191, 204 S.W.3d 579 (2005).

Summary judgment was properly awarded to a hospital in an action by appellants for negligent credentialing of a surgeon because the Arkansas Medical Malpractice Act did not confer a cause of action for negligent credentialing as a "medical injury;" credentialing decisions did not involve a professional service, a doctor's treatment or order, or a matter of medical science related to specific patient care. Paulino v. QHG of Springdale, Inc., 2012 Ark. 55, 386 S.W.3d 462 (2012), rehearing denied, — S.W.3d —, 2012 Ark. LEXIS 133 (Ark. Mar. 15, 2012).

16-114-203. Statute of limitations.

RESEARCH REFERENCES

ALR. Timeliness of action under medical malpractice statute of repose, aside from effect of fraudulent concealment of patient's cause of action. 14 A.L.R.6th 301.

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

CASE NOTES

Analysis

Actions Barred.
Discovery of Foreign Objects.
Fraudulent Concealment.
Tolling of Statute.

Actions Barred.

Order dismissing executor's complaint alleging medical malpractice in the care and treatment of his mother prior to her death was affirmed because the executor of her estate had been discharged as executor before he sued, so the first complaint was a nullity, and the new complaint was not filed before the expiration of the applicable statute of limitations. Johnson v. Greene Acres Nursing Home Ass'n, 364 Ark. 306, 219 S.W.3d 138 (2005).

Motion to set aside a default judgment in a medical malpractice case should have been granted as the patient lacked standing to pursue the claim based on the fact that she had filed bankruptcy; moreover, the statute of limitations had run when she filed a motion to substitute a bankruptcy trustee as a party. Fields v. Byrd, 96 Ark. App. 174, 239 S.W.3d 543 (2006).

Wrongful-death and survival action brought by the administratrix of the decedent's estate against the medical center was time-barred under this section as the order appointing the administratrix was not effective until it was filed almost two weeks after the complaint was filed, thereby making the complaint a nullity. Hubbard v. Nat'l Healthcare of Pocahontas, Inc., 371 Ark. 444, 267 S.W.3d 573 (2007).

Trial court did not err by granting the doctors' summary judgment because the

medical malpractice action was not properly filed within the two-year statute of limitations of subsection (a) of this section. The trial court did not err in holding that the November 3, 2009 order of substitution of parties was ineffective and therefore the action was barred by the statute of limitations because: (1) the wrongful death complaint filed by the patient's daughter and husband in April 2009 was a nullity because four siblings of the patient were omitted as party plaintiffs as required by § 16-62-102(b) and therefore it never existed; (2) the order of substitution of parties that substituted the daughter in her capacity of estate administrator as the party plaintiff did not allege any facts supporting the action and therefore did not constitute an amended complaint; (3) the order of substitution was entered on November 3, 2009, after the statute of limitations had expired as to each doctor in July 2009 and September 2009; and (4) the estate administrator could not establish the first element of the continuous-course-of-treatment doctrine because she could not establish that the doctors provided continuous treatment to the patient up to November 3, 2009. Mendez v. Glover, 2010 Ark. App. 808, 379 S.W.3d 92 (2010).

Discovery of Foreign Objects.

Doctor's motion to dismiss the patient's malpractice case was granted where, pursuant to this section, the patient did not provide the Arkansas Supreme Court with authority that would compel a finding that her own ovary should constitute a foreign object, the later discovery of which should toll the running of the statute of limitations. Reed v. Guard, 374 Ark. 1, 285 S.W.3d 662 (2008).

Fraudulent Concealment.

Because a general statute must yield when there is a specific statute involving the particular subject matter, in a minor child's medical malpractice action, the two-year statute of limitations in this section applied rather than the three-year statute of limitation in § 16-56-116. Shelton v. Fiser, 340 Ark. 89, 8 S.W.3d 557 (2000).

Tolling of Statute.

Although the amended complaint in parents' medical malpractice action was filed before the expiration of the two-year statute of limitations, the limitations period was not tolled because a summons was never issued, and parents admitted they failed to complete service of process of the amended complaint as required by Ark. R. Civ. P. 4; while Ark. R. Civ. P. 3 provides that an action is commenced by filing a complaint with the clerk of the proper court, the effectiveness of the commencement date is dependent upon a party satisfying the requirements of Ark. R. Civ. P. 4(i), which provides that service of process on a defendant must be accomplished within 120 days after the filing of the complaint. Posey v. St. Bernard's Healthcare, Inc., 365 Ark. 154, 226 S.W.3d 757 (2006).

Minority tolling provision of subdivision (c)(1) of this section was inapplicable where the minor at issue was stillborn. Dachs v. Hendrix, 2009 Ark. 542, 354 S.W.3d 95 (2009).

Cited: Baylark v. Helena Reg'l Med. Ctr., 2012 Ark. 405, — S.W.3d —, 2012 Ark. LEXIS 446 (Nov. 1, 2012).

16-114-206. Burden of proof.

RESEARCH REFERENCES

Ark. L. Rev. Recent Development: Arkansas Constitutional Law — Arkansas Medical Malpractice Act, 58 Ark. L. Rev. 1005.

Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

CASE NOTES

Analysis

Constitutionality.
Applicability.
Affidavit.
Expert Testimony.
Informed Consent.
Proximate Cause.
Standard of Care.

Constitutionality.

Because the language, "By means of expert testimony provided only by a medical care provider of the same specialty as the defendant" in subsection (a) of this section adds requirements to Ark. R. Evid. 702, attempts to dictate procedure, and invades the province of the judiciary's authority to set and control procedure, it violates the separation-of-powers doctrine, Ark. Const. Amend. 80, § 3, and the inherent authority of the courts to protect the integrity of proceedings and the rights of the litigants. Broussard v. St. Edward Mercy Health Sys., 2012 Ark. 14, 386 S.W.3d 385 (2012).

Applicability.

Although the United States argued that the current version of this section applied to a medical malpractice suit filed by Arkansas plaintiffs, it did not present any authority showing that the section was intended to apply retroactively. The current version of the section did not apply to plaintiffs' claims because they accrued prior March 25, 2007, which was when the current version took effect. McMullin v. United States, 515 F. Supp. 2d 909 (E.D. Ark. 2007).

Affidavit.

Medical malpractice complaint that was not accompanied by an expert's affidavit was properly dismissed; although plaintiffs alleged that the negligence of the doctor in allowing a sharp instrument to fall into patient's spinal cord was within a jury's comprehension as a matter of general knowledge, the court found that an expert was required for the jury to understand what a cervical diskectomy and fusion was, what instruments were used to perform the procedures, what procedures and risks were involved, and whether the doctor's actions proximately caused the injury alleged by appellants. Robbins v. Johnson, 367 Ark. 506, 241 S.W.3d 747 (2006).

Expert Testimony.

Grant of summary judgment against administratrix in her medical malpractice action was improper because the asserted acts of negligence by the doctor were within a lay jury's comprehension as a matter of common knowledge and expert witnesses were not required. Mitchell v. Lincoln, 93 Ark. App. 366, 219 S.W.3d 686 (2005), aff'd, 366 Ark. 592, 237 S.W.3d 455 (2006).

Medical expert could testify in a medical malpractice suit because plaintiffs presented evidence showing that Atlanta, Georgia, where the expert practiced, was similar to the rural Arkansas locality where their deceased son was treated: (1) pursuant to the former version of this section, the expert could testify as to the applicable standard of care only if he engaged in a similar medical speciality and practiced in a locality that was similar to the one where the son was treated; (2) both the expert and the son's treating physician were board certified pediatricians; and (3) the expert's deposition testimony and supplemental affidavit sufficiently established the similarity of the localities because he stated that the same diagnostic services were available to both himself and the son's treating physician, except for one specialized test that was not necessary to diagnose the son's infective bacterial endocarditis, and that the son would have been properly diagnosed if the treating physician had ordered some of those basic diagnostic tests to be performed. McMullin v. United States, 515 F. Supp. 2d 909 (E.D. Ark. 2007).

In a patient's medical malpractice suit, summary judgment in favor of her surgeon and the hospital was proper as the patient's allegations regarding her surgery were not matters of common knowledge, and she failed to provide expert testimony pursuant to this section so that the jury could evaluate her claims; absent testimony supporting her allegations, she had no proof of the standard of care, deviation, or proximate cause. Similarly, the care reasonably required by the hospital regarding the patient's staph infec-

tion and wound complications were not within the common knowledge of most jurors and needed expert testimony. Taylor v. Landherr, 101 Ark. App. 279, 275 S.W.3d 656 (2008).

Summary judgment was properly awarded to a physician in a patient's medical malpractice action where the patient failed to identify an expert witness; the patient had a significant amount of time to identify a medical expert to support the claims but failed to do so. Neal v. Farris, 101 Ark. App. 375, 278 S.W.3d 129 (2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 573 (Sept. 4, 2008).

Although the representative argued that she needed no expert testimony because it was common knowledge that a feeding tube was misplaced if it was in a patient's lung instead of her stomach, to fully understand the standard of care and the allegations of negligence against these doctors, the fact-finder would require an understanding of medical terminology and anatomy as well as medical protocol, such as what an attending physician or radiologist must do upon learning of a mis-positioned feeding tube and what information one physician must impart to another; thus, the representative had to produce expert testimony to assist the fact-finder. Lee v. Martindale, 103 Ark. App. 36, 286 S.W.3d 169 (2008).

Where the patient alleged that a doctor and a medical center's nursing staff were negligent in connection with a fall she sustained while a patient at the medical center, the trial court did not err by denying the patient's proffered instruction that would have allowed the jury to consider the testimony of her physician expert on the standard of care for the nursing staff; the physician was never qualified as an expert on nursing. Furthermore, the patient did not appeal the circuit judge's ruling that subsection (a) of this section controlled the admissibility of the doctor's testimony as to the standard of care for nurses rather than Ark. R. Evid. 702. Nelson v. Stubblefield, 2009 Ark. 256, 308 S.W.3d 586 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 486 (June 25, 2009).

District court did not abuse its discretion by excluding the expert testimony of a nurse because the record reflected that she either had repudiated the conclusions expressed in her written report, or at a minimum, had not developed her conclusions to the point where she could provide a qualified expert opinion at trial. Without expert testimony to support the allegation of negligence against the hospital, as required by this section, the district court acted appropriately in excluding evidence relating to alleged institutional negligence. Csiszer v. Wren, 614 F.3d 866 (8th Cir. 2010).

In a wrongful death action against a physician, the trial court properly granted a directed verdict to the physician based on the locality rule, subsection (a) of this section, because the expert witness provided by an administratrix demonstrated a total lack of knowledge concerning the local medical community, medical facilities, and local standard of care. Gilbow v. Richards, 2010 Ark. App. 780, — S.W.3d — (2010).

Trial court erred in ruling that § 16-114-207(3) was unconstitutional; the statute simply created a privilege for purposes of trial. It gave medical care providers, or their representatives, the privilege to refuse to testify as to the matters set forth in this section. Bedell v. Williams, 2012 Ark. 75, 386 S.W.3d 493 (2012).

In a medical malpractice action, the trial court did not err in granting the doctor's motion for directed verdict because the evidence did not show that the patient's medical expert was informed as to the standard of care in the locality as required by subsection (a) of this section. Plymate v. Martinelli, 2013 Ark. 194, — S.W.3d — (2013).

Informed Consent.

Where the patient testified that he would not have had surgery to remove part of his bowel had he known that no general surgeon would be in attendance to assist the urologist, it was for the jury to decide whether he gave his informed consent under subdivision (b)(1) of this section; therefore, the trial court erred by granting the urologist a directed verdict in the patient's medical malpractice case. Haupt v. Kumar, 103 Ark. App. 298, 288 S.W.3d 704 (2008).

Genuine issues of material fact remained as to whether a hospital was negligent in failing to obtain a patient's informed consent for the administration of spinal-block anesthesia prior to surgery,

because the patient signed a blank form, with no information as to the anesthesia to be used, while he was under the influence of pain medication. Villines v. N. Ark. Reg'l Med. Ctr., 2011 Ark. App. 506, 385 S.W.3d 360 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 688 (Ark. Ct. App. Oct. 26, 2011).

Proximate Cause.

In a medical malpractice case, where the appellate court remanded a case following entry of a default judgment for a trial on the issue of damages only, the trial court erred in permitting the doctor to introduce evidence regarding proximate causation because proximate causation was an element of liability, not an element of damages. Jones v. McGraw, 374 Ark. 483, 288 S.W.3d 623 (2008).

Although appellees stipulated that they were negligent in failing to remove a surgical clamp from appellant's abdomen, because there was substantial evidence to support the jury's verdict that she failed to prove that she sustained any damages as a result of the negligence, she did not meet her burden of proof under subdivision (a)(3) of this section. Thomas v. Sharon, 2013 Ark. App. 305, — S.W.3d — (2013).

Standard of Care.

Summary judgment was properly awarded to defendants in husband's wrongful death action under the Arkansas Medical Malpractice Act because, even if husband's expert had been qualified to offer an opinion, his affidavit did not include any statements setting forth the standard of care. Dodd v. Sparks Reg'l Med. Ctr., 90 Ark. App. 191, 204 S.W.3d 579 (2005).

Expert testimony was required for widow's medical malpractice claim as it was not common knowledge that transfusion of a leukemia patient with an allegedly improper blood type could cause injury to the patient and the widow's expert's affidavit was devoid of mention of the standard of care in Baxter County; thus, the widow's affidavit was insufficient to create a question of fact on the issue and the trial court did not err in granting doctor's motion for summary judgment. Mitchell v. Lincoln, 366 Ark. 592, 237 S.W.3d 455 (2006).

In a medical negligence case filed against an orthopedic surgeon practicing in Berryville, Arkansas, the trial court did not err in granting the surgeon's motion for a directed verdict, because the patient's medical experts did not satisfy the requirements of subdivision (a)(1) of this section as they did not show a familiarity with the standard of care applicable in Berryville or a similar locality. Bailey-Gray v. Martinson, 2013 Ark. App. 80, — S.W.3d — (2013).

Cited: Fryar v. Touchstone Physical Therapy, Inc., 365 Ark. 295, 229 S.W.3d 7 (2006); Newton v. Clinical Reference Lab., 517 F.3d 554 (8th Cir. 2008).

16-114-207. Expert witnesses.

RESEARCH REFERENCES

Ark. L. Rev. Recent Development: Arkansas Constitutional Law — Arkansas Medical Malpractice Act, 58 Ark. L. Rev. 1005.

CASE NOTES

Analysis

Constitutionality.
Qualified to Testify.

Constitutionality.

Patient in a medical malpractice suit argued that her constitutional rights were violated when she was precluded from introducing a physician's original deposition in which the physician testified as the standard of care and the suturing of the patient's bladder during a hysterectomy, but the physician later corrected his statement. The patient failed to show that the patient was prejudiced by the being precluded from introducing the testimony. Crowell v. Barker, 369 Ark. 428, 255 S.W.3d 858 (2007).

In reviewing plaintiff parents' challenge to the validity of subdivision (3) of this section, the court concluded that it was

unlikely that the Supreme Court of Arkansas would have accepted either their equal protection argument or separation-of-powers challenge, and the statute had already survived rational basis review. Moreover, any error was harmless as plaintiff had the chance to cross-examine defendant obstetrician on the standard of care after the defendant had taken the stand and testified on direct examination about the proper standard of care, thereby losing the protection of subdivision (3). Csiszer v. Wren, 614 F.3d 866 (8th Cir. 2010).

Trial court erred in ruling that subdivision (3) of this section was unconstitutional; the statute simply created a privilege for purposes of trial. It gave medical care providers, or their representatives, the privilege to refuse to testify as to the matters set forth in § 16-114-206. Bedell v. Williams, 2012 Ark. 75, 386 S.W.3d 493 (2012).

Qualified to Testify.

District court did not have to decide whether subdivision (3) of this section barred plaintiffs' expert witness from relying on the deposition testimony of a deceased child's treating physician to establish that the localities in which he and the treating physician practiced were similar for purposes of former § 16-114-206(a)(1). The expert's own deposition and supplemental affidavit were sufficient to establish that the same basic diagnostic services were available to board certified pediatricians in both Atlanta, Georgia, where he practiced and in rural Arkansas, where the treating physician practiced, and that the child would have been properly diagnosed if the treating physician had ordered some basic diagnostic tests to be performed. McMullin v. United States, 515 F. Supp. 2d 909 (E.D. Ark. 2007).

In a medical malpractice action against a nursing home, the court erred in ruling that subdivision (3) of this section did not apply to the nurses because they did not testify against themselves, but rather against their employer; only those medical professionals employed by an entity, such as physicians and nurses, could be called upon to give expert medical testimony against the entity itself under the meaning of subdivision (3). Bedell v. Williams, 2012 Ark. 75, 386 S.W.3d 493 (2012).

16-114-208. Damage awards — Periodic payment of future damages.

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

16-114-209. False and unreasonable pleadings.

CASE NOTES

Analysis

Constitutionality.
In General.
Insufficient Affidavit.

Constitutionality.

Patient lacked standing to challenge the constitutionality of § 16-114-209(b)(3) were a 30-day time limit was not applied to him; moreover, the patient did not present a convincing argument to overcome the strong presumption of constitutionality applied to the rest of § 16-114-209. A trial court's finding that one portion of such was unconstitutional was moot on appeal due to a finding that a dismissal was appropriate. Childers v. Payne, 369 Ark. 201, 252 S.W.3d 129 (2007).

The constitutional infirmity in § 16-114-209(b) is the provision for dismissal if an affidavit does not accompany a complaint within thirty days; therefore, a decision to dismiss a medical malpractice action for failing to file such an affidavit was reversed on appeal since this con-

flicted with Ark. R. Civ. P. 3 and Ark. Const. amend. 80, § 3. Summerville v. Thrower, 369 Ark. 231, 253 S.W.3d 415 (2007).

District court's order dismissing a fired worker's medical negligence suit had to be reversed: (1) the district court held that Arkansas law pertaining to medical malpractice suits applied to the worker's negligence suit against a clinical laboratory, a medical review officer, and the officer's employer, who had examined her drug test and had concluded that she had tested positive for drug use; (2) the district court concluded that it was compelled by subdivision (b)(3)(B) of this section, invalidated by Summerville v. Thrower, 369 Ark. 231 (2007), to dismiss the suit with prejudice after the worker failed to timely present an expert affidavit that established reasonable cause for filing an action for medical injury due to negligence; (3) after the district court dismissed the suit, and while the worker's appeal was pending, the Supreme Court of Arkansas, in Summerville, ruled that subdivision (b)(3)(B) of this section was invalid and struck it from the Arkansas Code, thereby rendering the statute a legal nullity; and (4) the Eighth Circuit appeals found it appropriate to exercise its discretion to address the Summerville decision, even though the worker waited until her reply brief to challenge the statute's validity, because the state supreme court's ruling was determinative of the appeal. Newton v. Clinical Reference Lab., 517 F.3d 554 (8th Cir. 2008).

In General.

Medical malpractice complaint that was not accompanied by an expert's affidavit was properly dismissed; although plaintiffs alleged that the negligence of the doctor in allowing a sharp instrument to fall into patient's spinal cord was within a jury's comprehension as a matter of general knowledge, the court found that an expert was required for the jury to understand what a cervical diskectomy and fusion was, what instruments were used to perform the procedures, what procedures and risks were involved, and whether the doctor's actions proximately caused the injury alleged by appellants. Robbins v. Johnson, 367 Ark. 506, 241 S.W.3d 747 (2006).

Insufficient Affidavit.

In a medical malpractice case against a chiropractor, where a patient failed to file a supplemental affidavit after a trial court held that the first one was too vague to comply with § 16-114-209 due to a failure to describe the expert's familiarity with the standard of care or how the injury was a proximate cause of the failure to perform within that standard, he was unable to argue for a reversal of the decision on appeal since he induced the action. Childers v. Payne, 369 Ark. 201, 252 S.W.3d 129 (2007).

16-114-212. Tolling of the statute of limitations.

CASE NOTES

In General.

Medical malpractice complaint that was not accompanied by an expert's affidavit was properly dismissed; although plaintiffs alleged that the negligence of the doctor in allowing a sharp instrument to fall into patient's spinal cord was within a jury's comprehension as a matter of general knowledge, the court found that an expert was required for the jury to understand what a cervical diskectomy and fusion was, what instruments were used to perform the procedures, what procedures and risks were involved, and whether the doctor's actions proximately caused the injury alleged by appellants. Robbins v. Johnson, 367 Ark. 506, 241 S.W.3d 747 (2006).

16-114-213. Sole remedy.

This subchapter is the sole remedy with respect to any action for medical injury against a medical care provider.

History. Acts 2013, No. 1196, § 4.

A.C.R.C. Notes. Acts 2013, No. 1196, § 1, provided: "Intent — Limitation.

"(a) This act is intended to ensure that:

"(1) A person who suffers a medical injury has the opportunity to seek compensation to return to the state of health that he or she enjoyed before the medical injury; and

"(2) For any one (1) medical injury, a person is not compensated more than once.

"(b) This act is not intended to affect punitive damages."

Subchapter 3 — Accountants and Attorneys

16-114-303. Liability of attorneys.

CASE NOTES

Analysis

Applicability.
Immunity.

Applicability.

In a negligence action, the real question was whether the property appraiser owed any legal duty to the plaintiff property owners, and the plaintiffs' reliance on §§ 4-86-101, 16-114-303, and 16-22-310 to support their proposition that privity of contract with an appraiser was not a requirement in their negligence suit was misplaced. Marlar v. Daniel, 368 Ark. 505, 247 S.W.3d 473 (2007).

Immunity.

Pursuant to §§ 16-22-310(a)(1) (1999) and 16-114-303, an attorney and law firm were immune from a couple's slander of title claim where there was no privity between the parties, there were no factual assertions of fraud, and it appeared that a lis pendens action to enforce a child arrearage judgment obtained by the husband's ex-wife was simply filed in error. Fleming v. Cox, 363 Ark. 17, 210 S.W.3d 866 (2005).

CHAPTER 116
PRODUCTS LIABILITY

SUBCHAPTER.
1. General Provisions.

Subchapter 1 — General Provisions

SECTION.
16-116-102. Definitions.

16-116-101. Title.

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

U. Ark. Little Rock L. Rev. Note, The Collision of Tort and Contract Law: Validity and Enforceability of Exculpatory Clauses in Arkansas, 28 U. Ark. Little Rock L. Rev. 279.

16-116-102. Definitions.

As used in this subchapter:

(1) "Anticipated life" means the period over which the product may reasonably be expected to be useful to the user as determined by the trier of facts;

(2) "Defective condition" means a condition of a product that renders it unsafe for reasonably foreseeable use and consumption;

(3) "Manufacturer" means the designer, fabricator, producer, compounder, processor, or assembler of any product or its component parts;

(4) "Product" means any tangible object or goods produced, excluding real estate and improvements located thereon. Provided, any tangible object or good produced that is affixed to, installed on, or incorporated into real estate or any improvement thereon shall constitute a product under this subchapter. Provided further, an improvement on real estate shall constitute a product in the event that environmental contaminants exist or have occurred in the improvement;

(5) "Product liability action" includes all actions brought for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, preparation, assembly, testing, service, warning, instruction, marketing, packaging, or labeling of any product;

(6)(A) "Supplier" means any individual or entity engaged in the business of selling a product, whether the sale is for resale or for use or consumption.

(B) "Supplier" includes a retailer, wholesaler, or distributor and also includes a lessor or bailor engaged in the business of leasing or bailment of a product.

(C) "Supplier" shall not include any licensee, as the term is defined in § 17-42-103(7), who is providing only brokerage and sales services under a license; and

(7)(A) "Unreasonably dangerous" means that a product is dangerous to an extent beyond that which would be contemplated by the ordinary and reasonable buyer, consumer, or user who acquires or uses the product, assuming the ordinary knowledge of the community or of similar buyers, users, or consumers as to its characteristics, propensities, risks, dangers, and proper and improper uses, as well as any special knowledge, training, or experience possessed by the particular buyer, user, or consumer or which he or she was required to possess.

(B) However, as to a minor, "unreasonably dangerous" means that a product is dangerous to an extent beyond that which would be contemplated by an ordinary and reasonably careful minor considering his or her age and intelligence.

History. Acts 1979, No. 511, § 2; A.S.A. 1947, § 34-2802; Acts 2007, No. 315, § 1.

CASE NOTES

Analysis

Defective Condition.
Defenses.
Product Liability Action.

Defective Condition.

Vehicle manufacturer was properly granted summary judgment in a driver's product liability suit alleging that injuries he sustained when he struck a tree while driving his vehicle were a result of defects in the air bag and seat belt and that the manufacturer was strictly liable for his injuries because pursuant to §§ 4-86-102(a), 16-116-102(7)(A), the driver had to prove that the product was unreasonably dangerous because of a design or manufacturing defect for which the manufacturer was responsible and he also had to prove that the product was in a defective condition at the time it left the hands of the particular seller, but the driver offered no evidence regarding the existence of a specific defect in the occupant protection system, requiring speculation as to whether it was defective at the time it left the manufacturer's control, and the driver failed to demonstrate liability on the basis of circumstantial evidence because the intricacies of occupant protection systems and their potential design or manufacturing defects were outside the realm of a juror's everyday experience, and there were other potential explanations for the driver's injuries other than a defect for which the manufacturer would be responsible. Ruminer v. GMC, 483 F.3d 561 (8th Cir. 2007).

Defenses.

As a matter of Arkansas law, a plaintiff cannot maintain a products liability action, as defined in subdivision (5) of this section, against the manufacturer of a name-brand prescription drug if the plaintiff consumed only the generic equivalent of that drug. To prevail in such an action, the plaintiff must be able to show that it is more likely than not that exposure to a particular manufacturer's product was a substantial factor in producing his or her injuries, and proximate causation can not be shown if the plaintiff did not consume a product that was actually produced by a sued manufacturer. Fields v. Wyeth, Inc., 613 F. Supp. 2d 1056 (W.D. Ark. 2009).

Two prescription drug manufacturers were granted summary judgment as to a consumer's products liability, negligence, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, and breach of implied warranty claims because the factual allegations in the complaint established that the suit was a "product liability action" as defined in subdivision (5) of this section, such an action required the consumer to show that it was more likely than not that exposure to the manufacturers' products was a substantial factor in producing her injuries, and the consumer could not make that showing because the manufacturers produced only brand-name version of a drug and the consumer stipulated that she had ingested only generic versions of the drug. The manufacturers could not be held liable for failure to warn and failure to label merely because generic drug manufacturers and the consumer's doctor may have relied upon information that they provided with regard to their own name-brand drugs. Fields v. Wyeth, Inc., 613 F. Supp. 2d 1056 (W.D. Ark. 2009).

Product Liability Action.

Consumer's suit constituted a "product liability action" as defined in subdivision (5) of this section because although she asserted products liability, negligence, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, and breach of implied warranty legal claims, the allegations in her complaint showed that she was seeking to recover for personal injuries that she allegedly sustained as the result of the failure of three prescription drug manufacturers to adequately warn about the side effects of a prescription drug that she ingested and failure to include adequate warnings on the labels used for the drug. Fields v. Wyeth, Inc., 613 F. Supp. 2d 1056 (W.D. Ark. 2009).

Appellants' warrant claims were barred by the limitations period of the Arkansas Product Liability Act, § 16-116-103, instead of the limitations period of the Uniform Commercial Code, § 4-2-725, because a claim for the costs of repairing the buses with corroded flooring would be a claim for property damage within the meaning of the Act, under subdivision (5)

of this section. IC Corp. v. Hoover Treated Wood Prods., 2011 Ark. App. 589, 385 S.W.3d 880 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 717 (Ark. Ct. App. Nov. 9, 2011).

Consumer's production liability suit alleging a failure to warn of the side effects of a certain prescription drug failed as to claims against brand manufacturers because she only ingested generic products. Bell v. Pfizer, Inc., 716 F.3d 1087 (8th Cir. 2013), rehearing denied, — F.3d —, 2013 U.S. App. LEXIS 15004 (8th Cir. Ark. July 23, 2013).

16-116-103. Limitation on actions.

CASE NOTES

Analysis

Actions Barred.
Breach of Warranty.
Running of Statute.

Actions Barred.

Circuit court did not err in granting appellees' motion for summary on the ground that appellants' claims were barred by this section, the Arkansas Product Liability Act, because there was no genuine issue of material fact regarding appellants' awareness of corrosion problems and its causal connection to alkaline copper quaternary (ACQ) and treated plywood more than three years before it filed its complaint; the statute of limitations could begin to run even though appellant could not have known the full extent of the damage caused by the ACQ, and the Act covered all of appellants' claims, including those based on warranty. IC Corp. v. Hoover Treated Wood Prods., 2011 Ark. App. 589, 385 S.W.3d 880 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 717 (Ark. Ct. App. Nov. 9, 2011).

Breach of Warranty.

Appellants' warrant claims were barred by the limitations period of the Arkansas Product Liability Act instead of the limitations period of the Uniform Commercial Code, § 4-2-725, because a claim for the costs of repairing the buses with corroded flooring would be a claim for property damage within the meaning of the Act, § 16-116-102(5). IC Corp. v. Hoover Treated Wood Prods., 2011 Ark. App. 589, 385 S.W.3d 880 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 717 (Ark. Ct. App. Nov. 9, 2011).

Running of Statute.

Jury could have found that a consumer's cause of action accrued at some point after the publication of a study's results, under this section, because (1) defendants, corporation and a company, changed their products' labeling significantly following the publication of the study's findings, devoting substantial label space to the results of the study; (2) the consumer presented sufficient evidence for the jury to find that the warnings were inadequate, contradictory, and confusing; and (3) the jury could have reasonably concluded that if medical doctors were unsure of the risk that hormone replacement therapy caused breast cancer, it was highly unlikely that a layperson would have been more aware of that risk. Scroggin v. Wyeth (In re Prempro Prods. Liab. Litig.), 586 F.3d 547 (8th Cir. 2009).

Court of appeals did not need to decide whether appellants' claims for "economic loss" were covered by the Uniform Commercial Code, § 4-2-725, instead of this section, the Arkansas Product Liability Act, because appellants failed to plead or present evidence as to its lost profits or lost goodwill, matters that had to be specifically pled under Ark. R. Civ. P. 9(g). IC Corp. v. Hoover Treated Wood Prods., 2011 Ark. App. 589, 385 S.W.3d 880 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 717 (Ark. Ct. App. Nov. 9, 2011).

CHAPTER 118

MISCELLANEOUS ACTIONS

16-118-103. Gambling debts and losses.

(a)(1)(A)(i) Any person who loses any money or property at any game or gambling device, or any bet or wager whatever, may recover the money or property by obtaining a judgment ordering the return of the money or property following an action against the person winning the money or property.

(ii) The suit shall be instituted within ninety (90) days after the paying over of the money or property so lost.

(B) The replevin suit provided for in subdivision (a)(1)(A) of this section does not excuse a person from liability for or create a defense under § 5-2-601 et seq. to any crime of violence with which he or she may be charged as a result of conduct to recover money or property so lost.

(2) The heirs, executors, administrators, or creditors of the person losing any money or property at any game or gambling device, or on any bet or wager whatever, may have the same remedy as is provided in subdivision (a)(1) of this section for the person losing.

(3) Nothing in this subsection shall be so construed as to enable any person to recover any money or property lost on any turf race.

(b)(1) All judgments, conveyances, bonds, bills, notes, securities, and contracts, where the consideration or any part thereof is money or property won at any game or gambling device, or any bet or wager whatever, or for money or property lent to be bet at any gaming or gambling device, or at any sport or pastime whatever, shall be void.

(2) The assignment of any bond, bill, note, judgment, conveyance, contract, or other security shall not affect the defense of the person executing the assignment.

(c) Any matter of defense under this section may be specially pleaded or may be given in evidence under the general issue.

(d)(1) In all suits under this section, the plaintiff may call on the defendant to answer on oath any interrogatory touching the case, and if the defendant refuses to answer, the same shall be taken as confessed.

(2) The answer shall not be admitted as evidence against the person in any proceedings by indictment.

(e) It is the strong public policy of the State of Arkansas that gambling, whether regulated or unregulated, on credit is an unenforce-

able contract and the courts of this state shall not enforce gambling debts, regardless of whether the contract was entered into within this state or without this state.

History. Rev. Stat., ch. 68, §§ 1-8; C. & M. Dig., §§ 4899-4905; Pope's Dig., §§ 6112-6118; A.S.A. 1947, §§ 34-1601 — 34-1608; Acts 1999, No. 985, § 1; 2003, No. 1185, § 243; 2009, No. 460, § 2.

A.C.R.C. Notes. Acts 2009, No. 460, § 3, provided: "It is the intent of this Act to overrule Daniels v. State, 373 Ark. 536, ___ S.W.3d ___ (2008), and its interpretation of § 16-118-103(a)(1). That case and its interpretation of replevin and the holding in Davidson v. State, 200 Ark. 495, 139 S.W.2d 409 (1940), are contrary to the public policy of this State."

Amendments. The 2009 amendment, in (a)(1), inserted (A)(1)(B), redesignated the remaining text accordingly, and inserted "obtaining a judgment ordering the return of the money or property following an" in (a)(1)(A)(i).

CASE NOTES

Construction With Other Laws.

Because defendant who stabbed a victim multiple times with a long knife was attempting to recover money that he had lost gambling with the victim, to which he had a right under this section, defendant could not be found guilty of aggravated robbery absent evidence that he was trying to get money in addition to money lost by gambling. Daniels v. State, 373 Ark. 536, 285 S.W.3d 205 (2008), superseded by statute as stated in, Heard v. State, 2009 Ark. 546, 354 S.W.3d 49 (2009).

16-118-107. Civil action by crime victim.

(a)(1) Any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct.

(2) The burden of proof for showing conduct that constituted a felony shall be a preponderance of the evidence.

(3) If the person who is injured or damaged prevails, he or she shall be entitled to recover costs and attorney's fees.

(b) The action may be maintained by the person who was injured or damaged or, after the person's death, the executor, administrator, or representative of his or her estate.

(c) The remedy provided in this section shall be in addition to any other remedies in law or equity.

(d) This section does not apply to offenses under § 5-28-101 et seq. or the Medicaid Fraud Act, § 5-55-101 et seq.

History. Acts 1997, No. 341, § 1; 2011, No. 223, § 1.

Amendments. The 2011 amendment added (d).

CASE NOTES

Analysis

Common-law Remedies for Retaliation Under Workers' Compensation Law.

By enacting this section, the Arkansas General Assembly did not intend to revive the individual cause of action for common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at § 11-9-107. Lambert v. LQ Mgmt., L.L.C., 2013 Ark. 114, — S.W.3d — (2013).

Dismissal.

District court did not commit plain error or abuse its discretion in exercising its supplemental jurisdiction under 28 U.S.C.S. § 1367 and dismissing a 42 U.S.C.S. § 1983 plaintiff's pendent claim of this section with prejudice because that claim arose out of the same core of operative facts that gave rise to plaintiff's federal claims, which were dismissed, and plaintiff failed to defend the pendant state law claim and/or urge the district court to dismiss it without prejudice, which it had discretion to do. Baker v. Chisom, 501 F.3d 920 (8th Cir. 2007), cert. denied, 554 U.S. 902, 128 S. Ct. 2932, 171 L. Ed. 2d 864 (2008).

Conduct that constituted mail fraud under 18 U.S.C.S. §§ 1341, 1342 did not constitute a felony under Arkansas law as was required for a civil action under this section. Murphy v. LCA-Vision, Inc., 776 F. Supp. 2d 886 (E.D. Ark. 2011).

Dismissal Denied.

Plaintiffs pleaded a facially plausible claim under this section where they alleged that the January patient notification letter defendants sent out could reasonably be construed as representing that plaintiffs were abandoning their patients or that defendants were terminating the physician-patient relationship between plaintiffs and the office's patients, the letter arguably constituted a written instrument that did or may have evidenced, created, transferred, terminated, or otherwise affected a legal right, interest, obligation, or status under § 5-37-201. Murphy v. LCA-Vision, Inc., 776 F. Supp. 2d 886 (E.D. Ark. 2011).

Judgment on Pleadings.

Judgment on the pleadings was entered against several Arkansas counties as to their claims under § 5-64-1102 and this section, because the counties' allegations did not show that companies that produced and marketed cold remedies containing ephedrine and pseudoephedrine, which ingredients were used in manufacturing methamphetamine (meth), unlawfully sold, distributed, or dispensed the remedies with reckless disregard as to how they would be used: (1) the counties did not allege that the companies failed to comply with federal law or §§ 5-64-1101 or 5-64-1103, which regulated the possession and sale of products containing ephedrine or pseudoephedrine; (2) it appeared that § 5-64-1101, rather than § 5-64-1102, applied to the companies because there was nothing in the record showing that the companies distributed their remedies to unlicensed or unregistered entities or that their commercial buyers, which included retailers, intended to use the remedies to manufacture meth; and (3) even if § 5-64-1102 applied, the counties did not offer any example of the companies' alleged reckless behavior beyond their broad assertion that distributing the remedies in their current pharmaceutical formulation was reckless. Independence County v. Pfizer, Inc., 534 F. Supp. 2d 882 (E.D. Ark. 2008), aff'd, Ashley County v. Pfizer, 552 F.3d 659 (8th Cir. 2009).

Recovery Permitted.

Plaintiff may recover under this section where (1) defendants made misrepresentations to plaintiffs with the intent of collecting the commitment fees; and (2) accepting the allegations in the Complaint as true, defendants received the commitment fees with the purpose of depriving plaintiff of its money. Terra Renewal, LLC v. McCarthy, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 94935 (E.D. Ark. July 10, 2012).

16-118-108. Civil actions against sellers of drug paraphernalia.

(a) As used in this subchapter, "drug paraphernalia" means those items as defined by §§ 5-64-101, 5-64-403(a)(4), 5-64-443, and 5-64-505.

(b)(1) Any person who becomes addicted to any controlled substance, as a result of the use of any drug paraphernalia sold to him or her by a store dealing in drug paraphernalia items, has a cause against the seller if the person can prove that the item purchased from the seller's store contributed to his or her addiction.

(2) Any parent or guardian may bring a cause of action described in subsection (a) of this section on behalf of a minor.

(c) Any third person injured or killed by a person using a controlled substance, whose use was caused or aided by the use of drug paraphernalia sold to the person by a store dealing in drug paraphernalia items, has a cause of action against the seller if the third person can prove that the item purchased from the store contributed to the person's use and the person's use proximately caused the third person's injury or death.

(d) Any person who requires hospitalization or outpatient service for drug abuse or a related medical problem is entitled to recover from any store that has sold any drug paraphernalia to the person and reimbursement for any such costs incurred.

(e) Any federal or state agency that provides medical or kindred treatment to any person who is addicted to drugs as a result of the use of any drug paraphernalia may cause litigation to be commenced against any store or individual that has sold an item of drug paraphernalia that contributed to the person's drug abuse and subsequent treatment, for the purpose of collecting the reasonable costs incurred by the federal or state agency.

(f) Prior to awarding any damages under this subchapter, the trier of fact shall make written determinations regarding the following questions:

(1) That a reasonably prudent person acting as the seller would have known or should have known that the item sold would be utilized in the unlawful use of drugs;

(2) Considering all the facts and circumstances surrounding the sale, including the physical characteristics of the business establishment and its method of operation, that the seller knew or should have known that the items sold would be utilized in the unlawful use of drugs.

History. Acts 1981, No. 971, §§ 1-6; A.S.A. 1947, § 82-2645, § 82-2646, § 82-2647, 82-2648, 82-2649, 82-2650; Acts 2011, No. 570, § 118.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "5-64-403(a)(4), 5-64-443" for "5-64-403" in (a).

16-118-109. Civil cause of action for victims of human trafficking.

(a) As used in this section, "victim of human trafficking" means the same as defined in § 5-18-102.

(b) An individual who is a victim of human trafficking may bring a civil action in any appropriate state court.

(c) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.

(d) A prevailing plaintiff shall also be awarded attorney's fees and costs.

(e) Three (3) times actual damages shall be awarded on proof of actual damages when a defendant's acts were willful and malicious.

(f)(1) A statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.

(2) If the plaintiff is a minor, the limitation period will not begin until he or she is eighteen (18) years of age.

(3) If the plaintiff is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action, the time of the disability will not be part of the time limited for the commencement of the action.

(4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, the time period during which the threats, intimidation, manipulation, or fraud occurred will not be part of the statute of limitations for the commencement of this action.

(5) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute of limitations is due to conduct by the defendant that induced the plaintiff to delay the filing of the action or placed the plaintiff under duress.

History. Acts 2013, No. 132, § 8; 2013, No. 133, § 8.

A.C.R.C. Notes. Acts 2013, No. 133, § 1, provided: "Title. This act shall be cited as the 'Arkansas Human Trafficking Act of 2013'."

16-118-110. Civil action for damages caused by violations of athletic association or conference regulations.

(a) As used in this section:

(1) "Athlete agent" means the same as defined at § 17-16-102;

(2) "Damages caused by violations of athletic association or conference regulations" means:

(A) Either:

(i) An institution of higher education or a student-athlete enrolled at the institution of higher education is declared ineligible to compete in intercollegiate athletics by a national association that promotes or

regulates intercollegiate athletics or by an intercollegiate athletic association or conference; or

(ii) An institution of higher education is placed on probationary status by a national association that promotes or regulates intercollegiate athletics or by an intercollegiate athletic association or conference; and

(B) As a result of the action under subdivision (a)(2)(A) of this section, the institution of higher education:

(i) Loses the ability to grant an athletic scholarship;

(ii) Loses the ability to recruit a student-athlete;

(iii) Loses eligibility to participate in intercollegiate competition;

(iv) Loses eligibility to participate in post-season intercollegiate competition;

(v) Forfeits an athletic contest; or

(vi) Suffers an adverse financial impact, including without limitation lost revenue from media coverage of athletic events or lost revenue from ticket sales; and

(3) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in an intercollegiate sport.

(b) An institution of higher education may bring a civil action against the following:

(1) An athlete agent violating a provision of the Uniform Athlete Agents Act, § 17-16-101 et seq., if his or her actions result in damages caused by violations of athletic association or conference regulations; or

(2) A person who knowingly induces or otherwise knowingly causes a student-athlete to take actions that result in damages caused by violations of athletic association or conference regulations.

(c)(1) An institution of higher education that prevails in a civil action under this section may recover compensatory damages, punitive damages, court costs, and reasonable attorney's fees.

(2) A court may award punitive damages even if the court does not award compensatory damages.

(d) A court may grant equitable relief to an institution of higher education to prevent harm that could result from the acts or omissions of a person under subdivisions (b)(1) and (2) of this section if the court finds a reasonable likelihood that a violation occurred.

History. Acts 2013, No. 1324, § 2.

A.C.R.C. Notes. Acts 2013, No. 1324, § 1, provided: "Legislative intent. The General Assembly finds:

"(1) Violations of athletic association or conference regulations impact the competitiveness and viability of intercollegiate athletic programs, negatively affecting the student athletes involved in the program, the students of the institution of higher education affected, the institution of higher education itself, and the community as a whole;

"(2) Violations of athletic association or conference regulations often occur due to the outside influence of persons unassociated with the institution of higher education, and these situations are often outside of the control of the institution of higher education; and

"(3) This act is necessary to deter conduct by persons seeking to violate athletic association or conference regulations or persons seeking to induce a student ath-

lete to violate athletic association or conference regulations."

CHAPTER 120

IMMUNITY FROM TORT LIABILITY

SUBCHAPTER.
2. Equine and Livestock Activities.
5. Charitable Immunity for a Church or Other Place of Worship.

Subchapter 1 — General Provisions

16-120-101. Legislative determination.

RESEARCH REFERENCES

Ark. L. Notes. Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

Subchapter 2 — Equine and Livestock Activities

SECTION.
16-120-201. Definitions.
16-120-202. Liability.

16-120-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Equine" means a horse, pony, mule, donkey, or hinny;

(2) "Equine activity" means:

(A) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including without limitation dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting;

(B) Equine training and teaching activities;

(C) Boarding equines;

(D) Riding, inspecting, or evaluating an equine belonging to another person regardless of whether the owner receives monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; and

(E) Rides, hunts, or other equine activities, however informal or impromptu;

(3) "Equine activity sponsor" means an individual or legal entity that sponsors, organizes, or provides facilities for an equine activity;

(4) "Livestock" means swine, bovine, sheep, and goats;

(5) "Livestock activity" means the following:

(A) Grazing, herding, feeding, branding, milking, or other activity that involves the care or maintenance of livestock;

(B) A livestock show, fair, competition, or auction;

(C) A livestock training or teaching activity;

(D) Boarding livestock; and

(E) Inspecting or evaluating livestock;

(6) "Livestock facility" means a property or facility at which a livestock activity is held;

(7) "Livestock owner" means a person who owns livestock that is involved in a livestock activity;

(8) "Livestock sponsor" means an individual or legal entity that sponsors, organizes, or provides facilities for a livestock activity; and

(9) "Participant" means a person, whether amateur or professional, who engages in an equine activity or a livestock activity regardless of whether a fee is paid to participate in the equine activity or livestock activity.

History. Acts 1991, No. 103, § 1; 1995, No. 353, § 1; 2013, No. 430, § 1.

Amendments. The 2013 amendment rewrote the section.

16-120-202. Liability.

(a)(1) Except as provided in subdivision (a)(2) of this section, an equine activity sponsor, an employee of an equine activity sponsor, a livestock sponsor, an employee of a livestock sponsor, a livestock owner, a livestock facility, or a livestock auction market is not liable for an injury to or the death of a participant resulting from the inherent risks of an equine activity or a livestock activity.

(2) Subdivision (a)(1) of this section does not prevent or limit the liability of an equine activity sponsor, an employee of an equine activity sponsor, a livestock sponsor, an employee of a livestock sponsor, a livestock owner, a livestock facility, or a livestock auction market that:

(A) Provides the equipment or tack and knows or should know that the equipment or tack is faulty to the extent that the equipment or tack caused injury;

(B) With respect to an equine activity sponsor, an employee of a equine activity sponsor, a livestock activity sponsor, or an employee of a livestock activity sponsor, provides the equine or livestock and fails to make reasonable and prudent efforts to determine the ability of a participant to engage safely in an equine activity or a livestock activity or to determine the ability of a participant to engage safely in an equine activity or a livestock activity and to safely manage the particular equine or livestock based on the participant's representation of his or her ability;

(C) Owns, leases, rents, or otherwise is in lawful possession and control of the facility upon which a participant sustains an injury because of a dangerous latent condition that is known or should have been known to the equine activity sponsor, an employee of the equine activity sponsor, the livestock activity sponsor, an employee of the

livestock activity sponsor, the livestock facility, or the livestock auction market and for which warning signs had not been conspicuously posted;

(D) Commits an act or omission that:

(i) Constitutes willful or wanton disregard for the safety of a participant; and

(ii) Causes an injury; or

(E) Intentionally injures a participant.

(3) Subdivision (a)(1) of this section does not prevent or limit the liability of an equine activity sponsor, an employee of an equine activity sponsor, a livestock activity sponsor, an employee of a livestock activity sponsor, a livestock owner, a livestock facility, or a livestock auction market under products liability laws.

(b)(1)(A) An equine activity sponsor or a livestock activity sponsor shall post and maintain signs that contain the warning notice specified in subdivision (b)(2) of this section.

(B) The signs required under subdivision (b)(1)(A) of this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine activity sponsor or livestock activity sponsor conducts equine or livestock activities.

(C) The warning notice specified in subdivision (b)(2) of this section shall appear on the sign in black letters with each letter to be a minimum of one inch (1″) in height.

(2) The signs described in subdivision (b)(1) of this section shall contain the following warning notice:

WARNING

Under Arkansas law, an equine activity sponsor, livestock activity sponsor, livestock owner, livestock facility, and livestock auction market are not liable for an injury to or the death of a participant in equine activities or livestock activities resulting from the inherent risk of equine activities or livestock activities.

(c) The immunity provided under this section does not apply to thoroughbred horse racing as authorized and regulated in the Arkansas Horse Racing Law, § 23-110-101 et seq.

History. Acts 1991, No. 103, § 2; 1995, No. 353, §§ 1, 2; 2013, No. 430, § 1.

Amendments. The 2013 amendment rewrote the section.

Subchapter 5 — Charitable Immunity for a Church or Other Place of Worship

16-120-501. Definitions.

As used in this section:

(1) "Church or other place of worship" means a physical location where persons congregate to practice a religion; and

(2) "Polling site" means the same as defined in § 7-1-101.

History. Acts 2013, No. 1118, § 1.

16-120-502. Charitable immunity for a church or other place of worship that is used as a polling site.

A church or other place of worship is entitled to tort immunity as provided in §§ 16-120-503 and 16-120-504 during the time the church or other place of worship is used as a polling site.

History. Acts 2013, No. 1118, § 1.

16-120-503. Church or other place of worship not vicariously liable.

A church or other place of worship or its agent is not vicariously liable for the negligence of another person on the property of the church or other place of worship during the time the church or other place of worship is used as a polling site.

History. Acts 2013, No. 1118, § 1.

16-120-504. Nonliability for damages — Exceptions.

A church or other place of worship is not liable for damages for personal injury, death, or property damage sustained by a person on the property of the church or other place of worship during the time the church or other place of worship is used as a polling site except as follows:

(1) If the church or other place of worship is covered by a policy of insurance, in which case liability for ordinary negligence is limited to the amount of insurance coverage provided by the policy of insurance; or

(2) If the church or other place of worship or its agent acts in bad faith or acts grossly negligent, recklessly, or intentionally.

History. Acts 2013, No. 1118, § 1.

16-120-505. Subchapter supplemental.

This subchapter is supplemental to and does not affect any tort immunity or charitable immunity a church or other place of worship may otherwise have under the law.

History. Acts 2013, No. 1118, § 1.

CHAPTER 122

CIVIL LIABILITY OF PERSONS CAUGHT SHOPLIFTING

SECTION.

Effective Dates. Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-122-102. Written demand required — Amount of damages.

(a) Under the provisions of this subchapter, the owner or seller shall issue a written demand letter by certified mail for the return of the merchandise or, only if the merchandise has not been returned or recovered, its retail cash equivalent, and a penalty in the amount of two hundred dollars ($200) for an adult to the last known address of the adult.

(b) If the individual to whom the written demand is sent complies with the terms of the demand letter within thirty (30) days of the receipt of the letter, that individual shall not be subject to further civil liability with respect to that specific act of retail theft.

(c)(1) If the individual to whom the written demand is sent does not comply within thirty (30) days of the receipt of a demand letter, then the owner or seller may bring an action against the individual for the recovery of civil damages and penalties in any court of competent jurisdiction if the total damages do not exceed the jurisdictional limit of that court.

(2) In an action brought under this subsection, the owner or seller may recover the following:

(A)(i) Civil damages in an amount equal to the retail value of the merchandise if the merchandise is not recovered or returned; or

(ii) If the merchandise is recovered or returned, civil damages in an amount equal to the difference between the market value of the recovered or returned merchandise and the retail value of the recovered or returned merchandise;

(B) A civil penalty of up to one thousand dollars ($1,000) for an adult;

(C) Court costs; and

(D) A reasonable attorney's fee.

(d) This section does not apply to juveniles subject to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

History. Acts 1993, No. 936, § 4; 2003, No. 1185, § 250; 2009, No. 956, § 33.

Amendments. The 2009 amendment, in (a), deleted "or emancipated minor, or one hundred dollars ($100) for an unemancipated minor" following "for an adult," and deleted "emancipated minor, employee, or parent or legal guardian of the unemancipated minor in question" following "address of the adult"; in (c), deleted (c)(2)(B)(ii), redesignated the remaining text accordingly, and deleted "or emancipated minor" following "for an adult" in present (c)(2)(B); and made related changes.

CHAPTER 123

CIVIL RIGHTS

SUBCHAPTER.

3. Arkansas Fair Housing Commission.

Subchapter 1 — The Arkansas Civil Rights Act of 1993

16-123-101. Title.

CASE NOTES

Analysis

In General.
Burden Shifting.
Deliberate Indifference.
Pretext.
Respondeat Superior.
Retaliation.

In General.

In a certified question, the Arkansas Supreme Court adopted the federal deliberate indifference standard as the proper standard to apply to claims under the Arkansas Civil Rights Act (Act). Thus, a federal district court applied the correct standard to a pretrial detainee's state claims under the Act. Grayson v. Ross, 483 F.3d 887 (8th Cir. 2007).

Motorist's complaint brought under the Arkansas Civil Rights Act, § 16-123-101 et seq., alleging that county officers were without jurisdiction to set up a roadblock and that the motorist's subsequent stop, detention, and arrest violated Ark. Const., Art. 2, § 15, was properly dismissed because the motorist failed to state a claim where the complaint did not assert that the officers' actions were unreasonable. Wade v. Ferguson, 2009 Ark. 618, — S.W.3d — (2009).

College, which was a community college, was an agency of the state and, thus, enjoyed Eleventh Amendment, U.S. Const. Amend. XI, sovereign immunity from the teacher's lawsuit against it alleging race discrimination and retaliation claims for not renewing the teaching contract of the teacher. As a result, the teacher's claims under Title V of the Americans with Disabilities Act, 42 U.S.C.S. § 12201 et seq., 42 U.S.C.S. § 1981 and 42 U.S.C.S. § 1983, and the Arkansas Civil Rights Act, § 16-123-101 et seq., had to be dismissed as claims against the state, but the teacher could still maintain an action under Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq. Reed v. College of the Ouachitas, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 56227 (W.D. Ark. Apr. 23, 2012).

City was not entitled to summary judg-

ment on employee's claim under the Arkansas Civil Rights Act, § 16-123-101 et seq., for failure to promote her on account of race, because the trial court failed to engage in the burden-shifting analysis required by McDonnell-Douglas. Additionally, the trial court erred in characterizing her failure to promote claim as a constructive discharge claim. Brodie v. City of Jonesboro, 2012 Ark. 5, — S.W.3d — (2012).

Burden Shifting.

Summary judgment was improperly granted in a case alleging violations of the Americans with Disabilities Act and the Arkansas Civil Rights Act, §§16-123-101 to -108, because the trial court should have used the McDonnell Douglas burden-shifting analysis and explained its findings. Johnson v. Windstream Communs., Inc., 2012 Ark. App. 590, — S.W.3d —, 2012 Ark. App. LEXIS 708 (Oct. 24, 2012).

Deliberate Indifference.

Judgment entered against a prison warden in a state prison inmate's 42 U.S.C.S. § 1983 and Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., suit was reversed because the evidence did not support the district court's finding that the warden was deliberately indifferent to the inmate's safety, in violation of the inmate's rights under U.S. Const., Amend. VIII, and the Arkansas Constitution: (1) the warden had investigated the grievances that were filed against two corrections officers, arising from their alleged mistreatment of prisoners, he had found that they were typical of grievances that were generally filed against corrections officers, and he had taken disciplinary action against the offending officer with regard to the one grievance that he found was substantiated; (2) the officers' employment records did not give the warden cause to believe that they presented a substantial risk to the safety of prisoners; and (3) the district court's disagreement with the warden's disciplinary choices, specifically the warden's failure to require the offending officer to participate in a remedial program in addition to the one-week suspension, temporary job reassignment, and reprimand that he received, was not sufficient to support the deliberate indifference finding. Lenz v. Wade, 490 F.3d 991 (8th Cir. 2007), cert. denied, 552 U.S. 998, 128 S. Ct. 504, 169 L. Ed. 2d 353 (2007).

Pretext.

Employee's racial discrimination claim against a school district under 42 U.S.C.S. §§ 1981, 1983, and 2000e and this section failed because there was insufficient evidence of pretext. There was no showing that the employee's qualifications for a new position were comparable to those of the successful applicant, and evidence that the school district did not follow its own hiring procedures was insufficient to establish pretext for discrimination. Dixon v. Pulaski County Special Sch. Dist., 578 F.3d 862 (8th Cir. 2009).

Terminated employee's race discrimination claims failed because the employer stated that it discharged the employee for failing to follow a supervisor's directive, and the employee did not show pretext since nineteen youth care workers were not valid comparators because they had different immediate supervisors from the employee and did not engage in the same conduct as the employee, and the employee's allegations of shifting explanations amounted to nothing more than a semantic dispute as to whether the employer's ultimatum to resign or be fired was a resignation or a termination. Bone v. G4s Youth Servs., — F.3d —, 2012 U.S. App. LEXIS 15663 (8th Cir. July 30, 2012).

Where a nursing home employee was terminated based on reports of improper sexual contact with a male resident, the employee's discrimination claims failed because (1) the employee's termination was not direct evidence of discrimination, and (2) the employee did not show pretext since the employee did not provide any evidence that any other employees who were not Pentecostal, female, or disabled were accused of the exact or similar behavior as the employee was. Evance v. Trumann Health Servs., LLC, 719 F.3d 673 (8th Cir. 2013), rehearing denied, — F.3d —, 2013 U.S. App. LEXIS 15005 (8th Cir. Ark. July 23, 2013).

Respondeat Superior.

Just like 42 U.S.C.S. § 1983, the doctrine of respondeat superior is not a basis for liability under the Arkansas Civil Rights Act of 1993, §§ 16-123-101 through 16-123-108; therefore, summary

judgment was properly granted to the Arkansas Crime Information Center, its director, and a state governor, in an action alleging misuse of expunged records where someone allegedly accessed them inappropriately and posted them on the Internet. Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

Retaliation.

Because plaintiff employee claimed that defendant city and supervisors retaliated against her because she filed an Equal Employment Opportunity Commission complaint, her retaliation claims were based on Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. §§ 2000e-2000e-17, and the Arkansas Civil Rights Act of 1993, §§ 16-123-101 through 108, not on whatever statute might apply to the underlying conduct of which she complained. Brown v. City of Jacksonville, 711 F.3d 883 (8th Cir. 2013).

Employee's retaliation claim failed because defendant and supervisors consistently had explained they terminated the employee's employment for two legitimate, non-retaliatory reasons (her work performance was unacceptable and her behavior toward other employees created a hostile work environment); the evidence supporting the explanation was strong, and the employee had presented no evidence that these legitimate reasons were pretextual. Brown v. City of Jacksonville, 711 F.3d 883 (8th Cir. 2013).

Cited: City of Farmington v. Smith, 366 Ark. 473, 237 S.W.3d 1 (2006).

16-123-102. Definitions.

CASE NOTES

Applicability.

Pursuant to the Arkansas Civil Rights Act of 1993, §§ 16-123-101 — 16-123-108, the trial court did not err in granting the employer's motion for summary judgment on the employer's gender discrimination claim as the employee was not eligible for leave under FMLA or pre-FMLA as she had only been with the company a short time; the employee did not proffer evidence to prove that the explanation provided by the employer was pretextual. Greenlee v. J.B. Hunt Transp. Servs., 2009 Ark. 506, 342 S.W.3d 274 (2009).

16-123-104. Construction.

CASE NOTES

Dismissal Improperly Denied.

In a civil rights action against a state trooper, a trial court erred by denying the trooper's motion to dismiss because he was immune from liability under Ark. Const. art. 5, § 20 in his official capacity since there was no waiver of sovereign immunity under §16-123-104; the action was tantamount to one against the State itself. Simons v. Marshall, 369 Ark. 447, 255 S.W.3d 838 (2007).

16-123-105. Civil rights offenses.

RESEARCH REFERENCES

ALR. What constitutes racial harassment in employment violative of state civil rights acts. 17 A.L.R.6th 563.

CASE NOTES

Analysis

Claim Dismissed.
Claim Not Dismissed.
Deliberate Indifference Standard.
Retaliation.
Supplemental Jurisdiction.

Claim Dismissed.

Federal district court rejected parents' argument that subsection (a) of this section created a cause of action against a school district and a vice principal because the district and the vice principal failed to enforce § 6-18-514, which guaranteed their son the right to receive a public education in an environment that was reasonably free from substantial intimidation, harassment, or harm or threat of harm by other students. Subsection (a) of this section created a private right of action when a person claimed that rights, privileges, or immunities that were secured by the Arkansas Constitution were violated, but did not create a private right of action for violation of state statutes. Wolfe v. Fayetteville Ark. Sch. Dist., 600 F. Supp. 2d 1011 (W.D. Ark. 2009).

In a former inmate's action for damages stemming from a rape by a county jailer, a county judge was entitled to summary judgment dismissing the civil rights claims under this section on immunity grounds under § 21-9-301 because the inmate failed to establish that the County acted with deliberate indifference when it hired the jailer where the inmate only offered unsupported allegations that the jailer had previously inappropriately hugged and kissed a 16-year-old female inmate; an unwanted hug and kiss were not nearly identical enough to the inmate's allegations to constitute deliberate indifference. Gentry v. Robinson, 2009 Ark. 634, 361 S.W.3d 788 (2009).

Police officer was entitled as a matter of law to qualified immunity on claims under subsection (a) of this section asserted by appellee father because the undisputed facts demonstrated probable cause for the father's arrest for driving on the wrong side of the road in contravention of § 27-51-301(a). Martin v. Hallum, 2010 Ark. App. 193, 374 S.W.3d 152 (2010).

Where a city employee was terminated for refusing a state trooper's request to take a drug test, the employee's claims under the Arkansas Civil Rights Act (ACRA) failed because the district court explained that its rulings on the employee's federal claims applied equally to the employee's ACRA claims, and the employee did not explain why the ACRA claims warranted separate analysis. Hess v. Ables, 714 F.3d 1048 (8th Cir. 2013).

Claim Not Dismissed.

Where a towing company sold an arrestee's truck, the arrestee's due process claim survived summary judgment because (1) regarding the federal due process claim, the towing company was acting under color of state law, (2) the towing company owner's action of selling the truck was an action by someone representing official company policy, and (3) the Arkansas Civil Rights Act claim was essentially the same as the federal due process claim. Smith v. Insley's, Inc., 499 F.3d 875 (8th Cir. 2007).

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs, thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

Deliberate Indifference Standard.

Arkansas Supreme Court adopts deliberate indifference as the proper standard for the health needs of pretrial detainees under the Arkansas Civil Rights Act.

Grayson v. Ross, 369 Ark. 241, 253 S.W.3d 428 (2007).

Retaliation.

Former university employee's free speech retaliation claim under this section and Ark. Const., Art. II, § 6 failed because the employee's filing of sexual harassment complaints against co-workers did not constitute protected speech; the employee was merely responding to sexual harassment allegations made against the employee by the co-workers, and the employee filed the complaints in an effort to avoid termination rather than as a matter of public concern. McCullough v. Univ. of Ark. for Med. Scis., 559 F.3d 855 (8th Cir. 2009).

Where a white employee resigned, the employee's retaliation claim failed because (1) the employee said nothing in a phone call about race discrimination, and (2) the employee did not demonstrate a materially adverse action since the employee failed to offer sufficient evidence of a constructive discharge; the employee's racially hostile work environment claim also failed. Helton v. Southland Racing Corp., 600 F.3d 954 (8th Cir. 2010).

Supplemental Jurisdiction.

Pretrial detainee's claims under this section, the Arkansas Civil Rights Act, and 42 U.S.C.S. § 1983, which were based on allegations that county officials failed to seek medical treatment for the detainee for severe drug intoxication, derived from a common nucleus of operative fact. The exercise of supplemental jurisdiction pursuant to 28 U.S.C.S. § 1367(a) over the state law claim was therefore appropriate. McRaven v. Sanders, 577 F.3d 974 (8th Cir. 2009).

Cited: Jones v. Huckabee, 369 Ark. 42, 250 S.W.3d 241 (2007).

16-123-107. Discrimination offenses.

CASE NOTES

Analysis

Claim Dismissed.
Disability Discrimination.
Evidence.
Gender Discrimination.
Racial Discrimination.
Racial Harassment.
Sexual Harassment.
Statute of Limitations.

Claim Dismissed.

Employee who claimed to have been discriminated against on the basis of race and gender following the employee's return from military duty failed to sufficiently allege an adverse employment action as required to establish a claim under the Arkansas Civil Rights Act, § 16-123-101 et seq.; the record did not support an allegation that the employee was not put back into the position that the employee held prior to military duty, and other alleged actions, including a delay in providing certain items and a temporary reassignment for training, did not affect material aspects of employment. Clegg v. Ark. Dep't of Corr., 496 F.3d 922 (8th Cir. 2007).

Disability Discrimination.

Where employee with depression sought meeting agendas as reasonable accommodation, employer was not entitled to judgment as a matter of law on the failure-to-accommodate claims because there was record support for the jury's findings that (1) employee was disabled due to depression and anxiety that substantially limited employee's ability to think and concentrate, (2) employer failed to engage in a good-faith interactive process with employee, and (3) employee's request was reasonable. Battle v. UPS, 438 F.3d 856 (8th Cir. 2006).

Evidence.

Employer was entitled to summary judgment on an employee's failure to promote claim under Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., 42 U.S.C.S. §§ 1981, 1983, and the Arkansas Civil Rights Act, § 16-123-107 et seq., because the undisputed facts showed that the person who was promoted to the position at issue was substantially more qualified than the employee both in education and experience and there was no evidence of discrimination based on race or sex. Tabb v. Allen, — F. Supp. 2d —, 2009 U.S.

Dist. LEXIS 10156 (E.D. Ark. Feb. 4, 2009).

Employer was entitled to summary judgment on an employee's sex and race discrimination claims under Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e et seq., 42 U.S.C.S. §§ 1981, 1983, and the Arkansas Civil Rights Act, § 16-123-107 et seq., involving the employer's failure to assign her a vehicle and fully reimburse her for certain mileage, because there was no evidence that discrimination based on race or sex influenced these decisions. Tabb v. Allen, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 10156 (E.D. Ark. Feb. 4, 2009).

Pursuant to the Arkansas Civil Rights Act of 1993, §§ 16-123-101 — 16-123-108, the trial court did not err in granting the employer's motion for summary judgment on the employer's gender discrimination claim as the employee was not eligible for leave under FMLA or pre-FMLA as she had only been with the company a short time; the employee did not proffer evidence to prove that the explanation provided by the employer was pretextual. Greenlee v. J.B. Hunt Transp. Servs., 2009 Ark. 506, 342 S.W.3d 274 (2009).

Gender Discrimination.

Former employee's sex discrimination claim under this section of the Arkansas Civil Rights Act failed, given evidence that the employee was terminated for sexually harassing co-workers and then filing untruthful sexual harassment complaints against those co-workers. Nothing in the record indicated that the officials who decided to terminate the employee lacked a good-faith belief that the employee committed sexual harassment and was untruthful, and the evidence did not raise a reasonable inference that sex discrimination motivated the employee's termination. McCullough v. Univ. of Ark. for Med. Scis., 559 F.3d 855 (8th Cir. 2009).

District court did not err in denying an employer's motion for judgment as a matter of law as to an employee's sex and disability discrimination claims under 42 U.S.C.S. § 2000e-2 and this section because a legally sufficient basis existed for a reasonable jury to determine that the employee had been discriminated against by the employer, and the jury was not required to accept the employer's proffered reasons for the employee's dismissal; the district court did not manifestly abuse its discretion in denying a motion for remittitur because the appellate court could not conclude that the award of $100,000 for mental anguish to the employee was monstrous, shocking, or grossly excessive considering precedent and the record made in the case. Hudson v. United Sys. of Ark., 709 F.3d 700 (8th Cir. 2013).

Racial Discrimination.

Employee's racial discrimination claim based on failure to promote failed because (1) the employer allegedly selected the other applicant based on, inter alia, experience, interview answers, and connections to government agencies, and (2) the employee failed to show pretext based on the employee's qualifications compared to the chosen applicant, false and shifting explanations for the decision, and other instances of discrimination. Barber v. C1 Truck Driver Training, LLC, 656 F.3d 782 (8th Cir. 2011).

Employee's racial discrimination claim based on the employee's termination for insubordination failed because the employee did not show pretext based on, inter alia, allegations regarding disparate disciplinary treatment of several other employees who were not similarly situated, a supervisor's treatment of the employee, and the employer's explanations for the decision. Barber v. C1 Truck Driver Training, LLC, 656 F.3d 782 (8th Cir. 2011).

Plaintiff cardiologist's comparators were not similarly situated to him, and he failed to provide any evidence giving rise to an inference that a defendant hospital association, executive officer, and other doctors racially discriminated against him in violation of 42 U.S.C.S. § 1981 and the Arkansas Civil Rights Act, or conspired to discriminate against him in violation of 42 U.S.C.S. §1985(3), when they revoked his hospital privileges based on plaintiff's behavior toward hospital staff, his poor record of patient care, and his failure to maintain proper medical records. Davis v. Jefferson Hosp. Ass'n, 685 F.3d 675 (8th Cir. 2012).

Racial Harassment.

Where a white employee resigned based on condescending emails, denial of day shifts, and a supervisor's alleged attempt

to implicate the employee in the theft of cash, the racially hostile work environment claim failed because the alleged verbal harassment was neither frequent nor severe, and the employee failed to offer sufficient evidence that the employee was constructively discharged. Helton v. Southland Racing Corp., 600 F.3d 954 (8th Cir. 2010).

Sexual Harassment.

Former employee failed to establish sexual harassment in violation of this section, the Arkansas Civil Rights Act, because her supervisor's comments that he controlled her job and she should be nice to him and his acts of rubbing her shoulders were not sufficiently severe or pervasive to create a sexually hostile work environment. Anderson v. Family Dollar Stores of Ark., Inc., 579 F.3d 858 (8th Cir. 2009).

Former employee failed to establish quid pro quo sexual harassment in violation of this section, the Arkansas Civil Rights Act, because she did not show that she suffered an adverse tangible employment action as a result of her refusal to submit to an implied or inferred demand for sexual favors from her supervisor. Anderson v. Family Dollar Stores of Ark., Inc., 579 F.3d 858 (8th Cir. 2009).

Statute of Limitations.

Former employee filed her Equal Employment Opportunity Commission (EEOC) charge on December 5, 2006, far more than 180 days after her supervisor's last offensive email to her and the employee did not allege sexual harassment acts within the statutory period; her federal claim for sexual harassment was therefore time barred. The employee filed her suit on December 26, 2007, more than one year after the last date of alleged sexual harassment; because her EEOC charge alleging sexual harassment was untimely filed, the employee could not rely on it to support the timeliness of her Arkansas Civil Rights Act, § 16-123-101 et seq., harassment claim. Burkhart v. Am. Railcar Indus., Inc., 603 F.3d 472 (8th Cir. 2010).

16-123-108. Retaliation — Interference — Remedies.

RESEARCH REFERENCES

ALR. What constitutes activity of employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing—Sufficiency of report. 10 A.L.R.6th 531.

What constitutes activity of employee, other than "reporting" wrongdoing, protected under state whistleblower protection statute. 13 A.L.R.6th 499.

CASE NOTES

Analysis

Adverse Employment Action.
Causal Link.
Pretext.
Protected Activities.
Supervisor.

Adverse Employment Action.

Employee who claimed to have been retaliated against following the employee's return from military duty failed to sufficiently allege an adverse employment action as required to establish a claim under the Arkansas Civil Rights Act, § 16-123-101 et seq.; the record did not support an allegation that the employee was not put back into the position that the employee held prior to military duty, and other alleged actions, including a delay in providing certain items and a temporary reassignment for training, did not affect material aspects of employment. Clegg v. Ark. Dep't of Corr., 496 F.3d 922 (8th Cir. 2007).

Where a white employee resigned, the employee's retaliation claim failed because (1) a phone conversation was not protected conduct since the employee said nothing in the call about race discrimination, and (2) the employee did not demonstrate a materially adverse action since the employee failed to offer sufficient evidence of a constructive discharge. Helton v. Southland Racing Corp., 600 F.3d 954 (8th Cir. 2010).

Retaliation claim filed by plaintiff, a new zoning official, against defendant city employer, failed because a written warning did not threaten termination or any other employment-related harm, as the employee had suffered no loss of pay, reduction in hours or responsibilities, or exclusion from other opportunities, and further, a prior discipline for similar misconduct weakened any inference that the warning was considered "materially adverse." Hill v. City of Pine Bluff, 696 F.3d 709 (8th Cir. 2012), rehearing denied, — F.3d —, 2012 U.S. App. LEXIS 23680 (8th Cir. Ark. Nov. 16, 2012).

Causal Link.

Assuming that plaintiff cardiologist engaged in protected conduct when he complained about other physicians' bias and racial discrimination to administrators, the only evidence for which was cited in his complaint, plaintiff failed to establish a causal connection between the complaint in 2005 and the ultimate revocation of his hospital privileges in 2007, and thus, his claim of retaliation under 42 U.S.C.S. § 1981 and the Arkansas Civil Rights Act failed as a matter of law. Davis v. Jefferson Hosp. Ass'n, 685 F.3d 675 (8th Cir. 2012).

Pretext.

That the employer forgave the employee's earlier errors did not prohibit it from terminating her when the mistakes continued and worsened; even if the employee could establish a prima facie retaliation case, no reasonable factfinder could conclude that the employer's proffered reason for firing her was pretextual as required in the McDonnell Douglas framework. Burkhart v. Am. Railcar Indus., Inc., 603 F.3d 472 (8th Cir. 2010).

Employee's retaliation claim based on failure to promote and the employee's termination for insubordination failed because the employee did not show pretext since, inter alia, the proximity of the promotion decision to the employee's statement that the employee would file a discrimination charge if not promoted was not probative of pretext. Barber v. C1 Truck Driver Training, LLC, 656 F.3d 782 (8th Cir. 2011).

Protected Activities.

Former employee's retaliation claim under this section of the Arkansas Civil Rights Act failed, given evidence that the employee was terminated for sexually harassing co-workers and for filing untruthful complaints accusing the co-workers of sexual harassment. The evidence showed that the employee was discharged not for filing complaints, but for filing untruthful complaints. McCullough v. Univ. of Ark. for Med. Scis., 559 F.3d 855 (8th Cir. 2009).

Supervisor.

In a case involving the Arkansas Civil Rights Act, § 16-123-101 et seq., a default judgment was not set aside under Ark. R. Civ. P. 55 because a motion for an extension was not timely where the request was not made to a trial court before the expiration of the period originally prescribed, the failure to respond in a timely manner due to one attorney being distracted by the birth of a child was not excusable neglect, an amendment to Ark. R. Civ. P. 12 was inapplicable, and an argument that the complaint failed to state a claim was rejected. The denial of illegal intent was insufficient in a first affidavit, a second affidavit was filed after the default was granted, and an individual supervisor could have been held personally liable for alleged acts of retaliation under subsection (a) of this section. Eusanio v. Tippin, 2013 Ark. App. 38, — S.W.3d — (2013).

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Subchapter 3 — Arkansas Fair Housing Commission

SECTION.

16-123-303. Creation — Members.

(a) There is created the Arkansas Fair Housing Commission.

(b)(1) The commission shall consist of thirteen (13) voting members, to be selected as follows: Seven (7) appointed by the Governor, three (3) appointed by the Speaker of the House of Representatives and three (3) appointed by the President Pro Tempore of the Senate, as set forth in this subchapter, for terms of four (4) years whose terms begin on January 1 and end on December 31 of the fourth year or when their respective successors are appointed and qualified.

(2)(A)(i) One (1) member shall have been a licensed real estate broker or licensed real estate salesperson engaged in the practice of residential real estate sales for not fewer than five (5) years prior to his or her nomination.

(ii) One (1) member shall have been a licensed real estate broker or licensed real estate salesperson engaged in the practice of multifamily real estate property management for no fewer than five (5) years prior to his or her nomination.

(iii) One (1) member shall have been a licensed real estate broker or licensed real estate salesperson engaged in the practice of real estate for no fewer than five (5) years prior to his or her nomination.

(B) The Governor shall appoint members to fill vacancies for the two (2) members to represent subdivisions (b)(2)(A)(i) and (ii) of this section from a list of four (4) nominees submitted by the Arkansas Realtors Association and a member to fill a vacancy for the one (1) member to represent subdivision (b)(2)(A)(iii) of this section not involving nominees from the Arkansas Realtors Association.

(3)(A) One (1) member shall have been a licensed homebuilder engaged in the homebuilding business for not fewer than five (5) years.

(B) The Governor shall appoint a member to fill a vacancy for the member to represent subdivision (b)(3)(A) of this section from a list of four (4) nominees submitted by the Arkansas Homebuilders Association.

(4)(A) One (1) member shall have been a mortgage broker employed for not fewer than five (5) years by a registered mortgage loan company or loan broker.

(B) The Governor shall appoint a member to fill a vacancy for the member to represent subdivision (b)(4)(A) of this section from a list of four (4) nominees submitted by the Arkansas Mortgage Bankers Association.

(5)(A) One (1) member shall have been a banker engaged in the banking business for not fewer than five (5) years.

(B) The Governor shall appoint a member to fill a vacancy for the member to represent subdivision (b)(5)(A) of this section from a list of

four (4) nominees jointly submitted by the Arkansas Community Bankers and the Arkansas Bankers Association.

(6)(A)(i) Seven (7) members shall represent consumers and shall not be actively engaged in or retired from the business of real estate, homebuilding, mortgage lending or banking, including one (1) member who shall be appointed by the Governor to represent persons meeting the definition of "disabled" in this subchapter from a list of four (4) nominees submitted by the Governor's Commission on People with Disabilities.

(ii) Three (3) of the members to be appointed pursuant to subdivision (b)(6)(A)(i) of this section shall be appointed by the Speaker of the House of Representatives, one (1) member who shall be a fair housing attorney or advocate with at least five (5) years of experience in advocacy for fair housing issues.

(iii) Three (3) of the members to be appointed pursuant to subdivision (b)(6)(A)(i) of this section shall be appointed by the President Pro Tempore of the Senate, one (1) member of whom shall be sixty (60) years of age or older who shall represent the elderly.

(B) A minimum of four (4) appointments made pursuant to subdivision (b)(6)(A)(i) of this section shall be given to persons protected under §§ 16-123-310 — 16-123-316.

(c) All members shall be full voting members of the commission.

(d)(1) Members of the Arkansas Fair Housing Commission appointed by the Governor shall at all times include one (1) member from each Arkansas congressional district.

(2) Appointments by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be as follows:

(A) The three (3) members appointed by the President Pro Tempore of the Senate shall be from the First Congressional District and the Second Congressional District and the three (3) members appointed by the Speaker of the House of Representatives shall be from the Third Congressional District and the Fourth Congressional District;

(B) At the next time for appointments, the three (3) members appointed by the President Pro Tempore of the Senate shall be from the Third Congressional District and the Fourth Congressional District and the three (3) members appointed by the Speaker of the House of Representatives shall be from the First Congressional District and the Second Congressional District; and

(C) Future appointments shall alternate between the requirements of subdivisions (d)(2)(A) and (d)(2)(B) of this section.

(e) The commission shall elect a chair from its membership.

(f) The commission shall meet at least quarterly.

(g)(1) The members of the commission shall serve four-year terms, except that the initial appointees shall serve staggered terms determined by a procedure established by the commission so that six (6) serve a two-year term and seven (7) serve a four-year term.

(2) No member may serve more than two (2) four-year terms.

(h) Each commissioner may receive expense reimbursement and stipends in accordance with § 25-16-905.

History. Acts 2001, No. 1785, § 4; 2007, No. 178, § 1; 2013, No. 1359, § 1.

Amendments. The 2013 amendment deleted former (d)(2) and (3) and added present (d)(2).

CHAPTER 125

IMMUNITY FOR YEAR 2000 COMPUTER ERRORS

SECTION.

16-125-101 — 16-125-104. [Repealed.]

Publisher's Notes. This chapter, concerning immunity for year 2000 computer errors, was repealed by Acts 2009, No. 157, § 1. The chapter was derived from the following sources:

16-125-101. Acts 1999, No. 1482, § 2.
16-125-102. Acts 1999, No. 1482, § 1.
16-125-103. Acts 1999, No. 1482, § 3.
16-125-104. Acts 1999, No. 1482, § 4.

CHAPTER 126

SALE OF ALCOHOL TO MINOR

Publisher's Notes. This Effective Dates note is being set out to reflect a revision to the approval date language.

Effective Dates. Acts 1999, No. 1596, § 10: July 30, 1999. While it was approved without Governor's signature, the emergency clause failed. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that recent court decisions indicate that the General Assembly must clarify the public policy of the State of Arkansas regarding liability for furnishing alcohol to a minor; that this act so provides; and that this act should go into effect as soon as possible in order that subsequent litigation be subject to this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

16-126-104. Civil liability for sale of alcohol to clearly intoxicated person.

CASE NOTES

Analysis

Alcohol Provider Not Liable.
Pleadings.

Alcohol Provider Not Liable.

Country club was not liable under this section to accident victims injured by a driver who had consumed alcohol at the country club's charitable fundraiser because there was no "sale" of alcohol to the driver by the country club; rather, the country club donated two bottles of wine for every table of 10 persons at the fundraiser. Under § 4-2-106(1), a sale consisted in the passing of title from the seller to the buyer for a price. Garcia v. Chenal Country Club, 2010 Ark. App. 180, — S.W.3d — (2010), review denied, Mason v. Chenal Country Club, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 396 (Aug. 6, 2010).

Pleadings.

Car accident victims failed to state a claim against a fraternity and its members who served kegs of beer at a party, leading one member to become intoxicated and crash into one of the victims, because liability was barred by § 16-126-106, and the fraternity was not a retailer of beverages under this section, although it charged admission to the party. Archer v. Sigma Tau Gamma Alpha Epsilon, Inc., 2010 Ark. 8, 362 S.W.3d 303 (2010).

16-126-106. Immunity from civil liability.

CASE NOTES

Liability.

Car accident victims failed to state a claim against a fraternity and its members who served kegs of beer at a party, leading one member to become intoxicated and crash into one of the victims, because liability was barred by this section, and the fraternity was not a retailer of beverages under § 16-126-104, although it charged admission to the party. Archer v. Sigma Tau Gamma Alpha Epsilon, Inc., 2010 Ark. 8, 362 S.W.3d 303 (2010).

CHAPTER 127

STALKER LIABILITY ACT

SECTION.
16-127-101. Title.
16-127-102. Civil liability for stalking.

16-127-101. Title.

This chapter shall be known and may be cited as the "Stalker Liability Act."

History. Acts 2013, No. 1014, § 2.

16-127-102. Civil liability for stalking.

(a) A person may recover actual damages, and if applicable, punitive damages, reasonable attorney's fees, and court costs against another person if he or she proves by a preponderance of the evidence that

another person knowingly engaged in a course of conduct towards the person that would place a reasonable person in the person's position under emotional distress or in fear for his or her safety or a third person's safety.

(b) The definitions at § 5-71-229(f) apply to this chapter.

(c) A cause of action under subsection (a) of this section may be maintained whether or not the person who is alleged to have engaged in a course of conduct prohibited under § 5-71-229 has been charged or convicted under § 5-71-229.

(d) The existence or the termination of a cause of action under subsection (a) of this section does not prevent the criminal prosecution of a person for violation of § 5-71-229.

(e) A person shall commence a cause of action under subsection (a) of this section against another person one (1) year or less after the most recent conduct prohibited under § 5-71-229 by the other person toward the aggrieved party.

History. Acts 2013, No. 1014, § 2.

CHAPTER 128

CIVIL LIABILITY FOR ACTS OF TERROR

16-128-101. Forfeiture of and claims against property used to further an act of terrorism.

(a) All property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of § 5-54-201 et seq., is subject to civil forfeiture to the state.

(b) A person injured as a result of a criminal offense under § 5-54-201 et seq., and a law enforcement agency or other governmental agency that participated in the investigation, mitigation, seizure, or forfeiture process for a criminal offense under § 5-54-201 et seq., may file a claim for costs or damages, and the property described in subsection (a) of this section shall be used to satisfy any costs or damages awarded for the claim.

(c)(1) A forfeiture or disposition under this section shall not affect the rights of a factually innocent person.

(2) A mortgage, lien, privilege, other security interest, or joint ownership interest shall not be affected by a forfeiture under this section if the owner of the mortgage, lien, privilege, other security interest or joint owner establishes that he or she is a factually innocent person.

(d) The allocation of proceeds from a forfeiture and disposition under this section shall be paid to claimants under subsection (b) of this section in the following order:

(1)(A) First, the costs of investigation shall be paid to the law enforcement agency or governmental agency that conducted the investigation.

(B) If more than one (1) law enforcement agency or governmental agency equally conducted the investigation, the costs of investigation shall be paid equally to the law enforcement agencies and governmental agencies conducting the investigation.

(C) If one (1) law enforcement agency or governmental agency primarily conducted the investigation, the costs of investigation first shall be paid to that law enforcement agency or governmental agency, with actual vouchered costs reimbursed on a pro rata basis to the other law enforcement agencies or governmental agencies participating in the investigation, not to exceed ten percent (10%) of the costs of investigation allocated to the primary law enforcement agency or governmental agency;

(2) Second, twenty-five percent (25%) of the proceeds plus the costs of prosecution or all of the remaining proceeds, whichever is less, shall be paid to the prosecuting attorney;

(3) Third, the costs of investigation shall be paid on a pro rata basis to a law enforcement agency or governmental agency that was not fully reimbursed under subdivision (d)(1)(C) of this section;

(4) Fourth, the costs of mitigation, seizure, or forfeiture shall be paid on a pro rata basis to a law enforcement agency or governmental agency that participated in the mitigation, seizure, or forfeiture process; and

(5) Fifth, any remaining proceeds shall be paid on a pro rata basis to satisfy any judgments under § 16-128-102 for persons injured as a result of the criminal offense under § 5-54-201 et seq.

(e)(1) Property subject to forfeiture under this section may be seized by a law enforcement officer upon the issuance of a court order.

(2) Seizure without a court order may be made if:

(A) The seizure is incident to a lawful arrest or search; or

(B) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based on this section.

(3)(A) A forfeiture action resulting from a seizure under this subsection (e) shall be instituted promptly.

(B) Property taken or detained under this section is not subject to sequestration or attachment but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court.

(C) When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer making the seizure may:

(i) Place the property under seal;

(ii) Remove the property to a place designated by the court; or

(iii) Request another agency authorized by law to take custody of the property and remove it to an appropriate location.

(f) The limitations period for a claim brought under this section is five (5) years from the date of the discovery of the violation of § 5-54-201 et seq.

History. Acts 2013, No. 1295, § 1.

16-128-102. Civil action by person injured by an act of terrorism.

(a) A person injured as a result of a criminal offense under § 5-54-201 et seq. may file an action for damages against the person who violated § 5-54-201 et seq.

(b) A person who files an action under this section is entitled to recover three (3) times the actual damages sustained or ten thousand dollars ($10,000), whichever is greater, as well as attorney fees in the trial and appellate courts if the person prevails in the claim.

(c) The limitations period for an action under this section is five (5) years from the date of discovery of the violation of § 5-54-201 et seq.

(d) A person who receives a judgment under this section may seek satisfaction of the judgment under § 16-128-101.

History. Acts 2013, No. 1295, § 1.